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DONALD M. CINNAMOND
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U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

NL Industries, Inc., Gould
Electronics Inc., Johnson
Controls, Inc., Exide Inc.,
Lucent Technologies, Inc.,
Rhone-Poulenc Inc., The
Burlington Northern and Santa
Fe Railway Co., ESCO Corp.,
and Schnitzer Investment Corp.,

Defendants.

CIVIL ACTION NO.

CV '98-322- HA

CONSENT DECREE

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3 CONSENT DECREE

4 I. BACKGROUND

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6 A. The United States of America ("United States"), on behalf
7 of the Administrator of the United States Environmental Protection
8 Agency ("EPA"), filed a complaint in this matter pursuant to Sections
9 106 and 107 of the Comprehensive Environmental Response, Compensation,
10 and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

11 B. The United States in its complaint seeks, inter alia: (1)
12 reimbursement of costs incurred by EPA and the Department of Justice
13 for response actions at the Gould Superfund Site ("Site") in Portland,
14 Oregon, together with accrued interest; and (2) performance of studies
15 and response work by the Defendants at the Site consistent with the
16 National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

17 C. In accordance with the NCP and Section 121(f)(1)(F) of
18 CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Oregon
19 (the "State") on June 2, 1997, of negotiations with potentially
20 responsible parties regarding the implementation of the remedial
21 design and remedial action for the Site, and EPA has provided the
22 State with an opportunity to participate in such negotiations and be
23 a party to this Consent Decree.

24 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §
25 9622(j)(1), EPA notified the United States Department of Interior and
26 the United States Department of Commerce-National Oceanic and
27 Atmospheric Administration, and the State of Oregon Department of

Environmental Quality on June 30, 1997 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The participation by any Settling Defendant in this Consent Decree shall not be considered an admission of liability for any purpose, and the fact of such participation by the Settling Defendant shall not be admissible against such Settling Defendant in any judicial or administrative proceeding; except, however, in an action or proceeding brought by the United States to enforce the terms of this Consent Decree, a Settling Defendant's participation in this Consent Decree shall be admissible as evidence.

F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Focused Feasibility Study and of the proposed plan for an amended remedial action on April 1, 1996, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action.

G. The decision by EPA on the remedial action to be implemented

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2 at the Site is embodied in a Record of Decision ("ROD"), executed on
3 June 3, 1997, on which the State has given its concurrence. The ROD
4 includes a responsiveness summary to the public comments. Notice of
5 the final plan was published in accordance with Section 117(b) of
6 CERCLA, 42 U.S.C. § 9617(b).

7 H. EPA issued a first amendment to the Unilateral Administrative
8 Order ("UAO") on July 8, 1997, which directed the Settling Defendants
9 to perform the Remedial Design and specified portions of the Remedial
10 Action selected in the ROD. EPA shall terminate the UAO upon its
11 approval of the Remedial Design Work Plan.

12 I. Based on the information presently available to EPA, EPA
13 believes that the Work will be properly and promptly conducted by the
14 Settling Defendants if conducted in accordance with the requirements
15 of this Consent Decree and its appendices.

16 J. Solely for the purposes of Section 113(j) of CERCLA, 42
17 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the Work
18 to be performed by the Settling Defendants shall constitute a response
19 action taken or ordered by the President.

20 K. The Parties recognize, and the Court by entering this
21 Consent Decree finds, that this Consent Decree has been negotiated by
22 the Parties in good faith and implementation of this Consent Decree
23 will expedite the cleanup of the Site and will avoid prolonged and
24 complicated litigation between the Parties, and that this Consent
25 Decree is fair, reasonable, and in the public interest.

26 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:
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2 II. JURISDICTION

3 1. This Court has jurisdiction over the subject matter of this
4 action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606,
5 9607, and 9613(b). This Court also has personal jurisdiction over the
6 Settling Defendants. Solely for the purposes of this Consent Decree
7 and the underlying complaint, Settling Defendants waive all objections
8 and defenses that they may have to jurisdiction of the Court or to
9 venue in this District. Settling Defendants shall not challenge the
10 terms of this Consent Decree or this Court's jurisdiction to enter and
11 enforce this Consent Decree.

12 III. PARTIES BOUND

13 2. This Consent Decree applies to and is binding upon the United
14 States and upon Settling Defendants and their successors and assigns.
15 Any change in ownership or corporate status of a Settling Defendant
16 including, but not limited to, any transfer of assets or real or
17 personal property, shall in no way alter such Settling Defendant's
18 responsibilities under this Consent Decree.

19 3. Work-Performing Settling Defendants shall provide a copy of
20 this Consent Decree to each contractor hired to perform the Work (as
21 defined below) required by this Consent Decree and to each person
22 representing any Work-Performing Settling Defendants with respect to
23 the Site or the Work and shall condition all contracts entered into
24 hereunder upon performance of the Work in conformity with the terms
25 of this Consent Decree. Work-Performing Settling Defendants or their
26 contractors shall provide written notice of the Consent Decree to all
27 subcontractors hired to perform any portion of the Work required by

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2 this Consent Decree. Work-Performing Settling Defendants shall
3 nonetheless be responsible for ensuring that their contractors and
4 subcontractors perform the Work contemplated herein in accordance with
5 this Consent Decree. With regard to the activities undertaken
6 pursuant to this Consent Decree, each contractor and subcontractor
7 shall be deemed to be in a contractual relationship with the Work-
8 Performing Settling Defendants within the meaning of Section 107(b)(3)
9 of CERCLA, 42 U.S.C. § 9607(b)(3).

10 IV. DEFINITIONS

11 4. Unless otherwise expressly provided herein, terms used in
12 this Consent Decree which are defined in CERCLA or in regulations
13 promulgated under CERCLA shall have the meaning assigned to them in
14 CERCLA or in such regulations. Whenever terms listed below are used
15 in this Consent Decree or in the appendices attached hereto and
16 incorporated hereunder, the following definitions shall apply:

17 "CERCLA" shall mean the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601
19 et seq.

20 "Consent Decree" shall mean this Decree and all appendices
21 attached hereto (listed in Section XXIX). In the event of conflict
22 between this Decree and any appendix, this Decree shall control.

23 "Day" shall mean a calendar day unless expressly stated to be a
24 working day. "Working day" shall mean a Day other than a Saturday,
25 Sunday, or Federal holiday. In computing any period of time under
26 this Consent Decree, where the last day would fall on a Saturday,
27 Sunday, or Federal holiday, the period shall run until the close of

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2 business of the next working day.

3 "EPA" shall mean the United States Environmental Protection
4 Agency and any successor departments or agencies of the United States.

5 "Future Response Costs" shall mean all costs, including, but not
6 limited to, direct and indirect costs, that the United States incurs
7 in reviewing or developing plans, reports and other items pursuant to
8 this Consent Decree, verifying the Work, or otherwise implementing,
9 overseeing, or enforcing this Consent Decree, including, but not
10 limited to, payroll costs, contractor costs, travel costs, laboratory
11 costs, the costs incurred pursuant to Sections VII, IX (including, but
12 not limited to, the cost of attorney time and any monies paid to
13 secure access and/or to secure or implement institutional controls
14 including, but not limited to, the amount of just compensation), XV,
15 and Paragraph 86 of Section XXI. Future Response Costs shall also
16 include all Interim Response Costs.

17 "Interim Response Costs" shall mean all costs, including direct
18 and indirect costs, (a) incurred after July 1, 1996 but paid by the
19 United States in connection with the Site between July 1, 1997 and the
20 effective date of this Consent Decree, or (b) incurred after July 1,
21 1996 but paid after the effective date of this Consent Decree.

22 "Interest," shall mean interest at the rate specified for
23 interest on investments of the Hazardous Substance Superfund
24 established under Subchapter A of Chapter 98 of Title 26 of the U.S.
25 Code, compounded on October 1 of each year, in accordance with 42
26 U.S.C. § 9607(a).

27 "National Contingency Plan" or "NCP" shall mean the National Oil
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2 and Hazardous Substances Pollution Contingency Plan promulgated
3 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40
4 C.F.R. Part 300, and any amendments thereto.

5 "Operation and Maintenance" or "O & M" shall mean all activities
6 required to maintain the effectiveness of the Remedial Action as
7 required under the Operation and Maintenance Plan approved or
8 developed by EPA pursuant to this Consent Decree and the Statement of
9 Work (SOW).

10 "Owner Settling Defendants" shall mean Gould Electronics Inc.,
11 the Burlington Northern and Santa Fe Railway Company, Rhone-Poulenc,
12 Inc., ESCO Corp., and Schnitzer Investment Corp.

13 "Paragraph" shall mean a portion of this Consent Decree
14 identified by an arabic numeral or an upper case letter.

15 "Parties" shall mean the United States, and the Settling
16 Defendants.

17 "Past Response Costs" shall mean all unreimbursed costs,
18 including, but not limited to, direct and indirect costs, that the
19 United States paid at or in connection with the Site through June 30,
20 1997, plus Interest on all such costs which has accrued pursuant to
21 42 U.S.C. § 9607(a) through such date.

22 "Performance Standards" shall mean the cleanup standards and
23 other measures of achievement of the goals of the Remedial Action, set
24 forth on pages 26-28 of the ROD and Section III of the SOW.

25 "Plaintiff" shall mean the United States.

26 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42
27 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and

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2 Recovery Act).

3 "Record of Decision" or "ROD" shall mean the EPA Record of
4 Decision relating to the Soils Operable Unit at the Site signed on
5 June 3, 1997, by the Regional Administrator, EPA Region 10, and all
6 attachments thereto, which amends the March 31, 1988 Record of
7 Decision for the Soils Operable Unit at the Site. The ROD is attached
8 as Appendix A.

9 "Remedial Action" shall mean those activities, except for
10 Operation and Maintenance, to be undertaken by the Work-Performing
11 Settling Defendants to implement the ROD, in accordance with the SOW
12 and the final Remedial Design and Remedial Action Work Plans and other
13 plans approved by EPA.

14 "Remedial Action Work Plan" shall mean the document developed
15 pursuant to Paragraph 12 of this Consent Decree and approved by EPA,
16 and any amendments thereto.

17 "Remedial Design" shall mean those activities described by
18 Section IX of the First Amendment to EPA Administrative Order, EPA
19 Docket No. 1091-01-10-106, which require the Work-Performing Settling
20 Defendants to develop the final plans and specifications for the
21 Remedial Action pursuant to the Remedial Design Work Plan.

22 "Remedial Design Work Plan" shall mean the document, including
23 any amendments thereto, developed pursuant to Section IX of the First
24 Amendment to EPA Administrative Order, EPA Docket No 1091-01-10-106.

25 "Section" shall mean a portion of this Consent Decree identified
26 by a roman numeral.

27 "Settling Defendants" shall mean NL Industries, Inc., Gould

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2 Electronics Inc., Johnson Controls, Inc., Exide, Inc., Lucent
3 Technologies, Inc., Rhone-Poulenc, Inc., the Burlington Northern and
4 Santa Fe Railway Company, ESCO Corp., and Schnitzer Investment Corp.

5 "Site" shall mean the Gould Superfund Site, encompassing
6 approximately 30 acres, located at about 5909 N.W. 61st Avenue in
7 Portland, Multnomah County, Oregon as depicted generally on the map
8 attached as Appendix C, and the areal extent of contamination and all
9 suitable areas in very close proximity to the contamination necessary
10 for implementation of the response action.

11 "State" shall mean the State of Oregon.

12 "Statement of Work" or "SOW" shall mean the statement of work for
13 implementation of the Remedial Design, Remedial Action, and Operation
14 and Maintenance at the Site, as set forth in Appendix B to this
15 Consent Decree and any modifications made in accordance with this
16 Consent Decree.

17 "Supervising Contractor" shall mean the principal contractor
18 retained by the Work-Performing Settling Defendants to supervise and
19 direct the implementation of the Work under this Consent Decree.

20 "United States" shall mean the United States of America.

21 "Waste Material" shall mean (1) any "hazardous substance" under
22 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or
23 contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any
24 "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

25 "Work" shall mean all activities Settling Defendants are required
26 to perform under this Consent Decree, except those required by Section
27 XXV (Retention of Records).

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2 "Work-Performing Settling Defendants" shall mean NL Industries,
3 Inc., Gould Electronics Inc., and Rhone-Poulenc, Inc.
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5 V. GENERAL PROVISIONS

6 5. Objectives of the Parties

7 The objectives of the Parties in entering into this Consent
8 Decree are to protect public health or welfare or the environment at
9 the Site by the design and implementation of response actions at the
10 Site by the Settling Defendants, to reimburse response costs of the
11 Plaintiff, and to resolve the claims of Plaintiff against Settling
12 Defendants as provided in this Consent Decree.

13 6. Commitments by Settling Defendants

14 a. Settling Defendants shall finance and perform the Work
15 required of them herein in accordance with this Consent Decree, the
16 ROD, the SOW, and all work plans and other plans, standards,
17 specifications, and schedules set forth herein or developed by such
18 Settling Defendants and approved by EPA pursuant to this Consent
19 Decree. Settling Defendants shall also reimburse the United States
20 for Future Response Costs as provided in this Consent Decree.

21 b. The obligations of the Work-Performing Settling
22 Defendants to finance and perform the Work required of them herein,
23 and to pay amounts owed to the United States are joint and several.

24 In the event of the insolvency or other failure of any one or more
25 Work-Performing Settling Defendants to implement the requirements of
26 this Consent Decree, the remaining Work-Performing Settling Defendants
27 shall complete all such requirements.

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2 7. Compliance With Applicable Law

3 All activities undertaken by Work-Performing Settling Defendants
4 and the Owner Settling Defendants pursuant to this Consent Decree
5 shall be performed in accordance with the requirements of all
6 applicable federal and state laws and regulations. Work-Performing
7 Settling Defendants must also comply with all applicable or relevant
8 and appropriate requirements of all Federal and state environmental
9 laws as set forth in the ROD and the SOW. The activities conducted
10 pursuant to this Consent Decree, if approved by EPA, shall be
11 considered to be consistent with the NCP.

12 8. Permits

13 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. §
14 9621 (e), and Section 300.400(e) of the NCP, no permit shall be
15 required for any portion of the Work conducted entirely on-Site (i.e.,
16 within the areal extent of contamination or in very close proximity
17 to the contamination and necessary for implementation of the Work).
18 Where any portion of the Work that is not on-Site requires a federal
19 or state permit or approval, Work-Performing Settling Defendants shall
20 submit timely and complete applications and take all other actions
21 necessary to obtain all such permits or approvals.

22 b. The Work-Performing Settling Defendants may seek relief
23 under the provisions of Section XVIII (Force Majeure) of this Consent
24 Decree for any delay in the performance of the Work resulting from a
25 failure to obtain, or a delay in obtaining, any permit required for
26 the Work.

27 c. This Consent Decree is not, and shall not be construed

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2 to be, a permit issued pursuant to any federal or state statute or
3 regulation.

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5 9. Notice to Successors-in-Title

6 a. With respect to any property owned or controlled by the
7 Owner Settling Defendants that is located within the Site, within
8 fifteen (15) days after the entry of this Consent Decree, the Owner
9 Settling Defendants shall submit to EPA for review and approval a
10 notice to be filed with the Recorder's Office or Registry of Deeds or
11 other appropriate office, Multnomah County, State of Oregon, which
12 shall provide notice to all successors-in-title that the property is
13 part of the Site, that EPA selected a remedy for the Site on June 2,
14 1997, and that potentially responsible parties have entered into a
15 Consent Decree requiring implementation of the remedy. Such notices
16 shall identify the United States District Court in which the Consent
17 Decree was filed, the name and civil action number of this case, and
18 the date the Consent Decree was entered by the Court. The Owner
19 Settling Defendants shall record the notices within ten (10) days of
20 EPA's approval of the notices. The Owner Settling Defendants shall
21 provide EPA with a certified copy of the recorded notices within ten
22 (10) days of recording such notices.

23 b. At least ten (10) days prior to the conveyance of any
24 interest in property located within the Site including, but not
25 limited to, fee interests, leasehold interests, and mortgage
26 interests, the Owner Settling Defendant conveying the interest shall
27 give the grantee written notice of (i) this Consent Decree, (ii) any

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2 instrument by which an interest in real property has been conveyed
3 that confers a right of access to the Site (hereinafter referred to
4 as "access easements") pursuant to Section IX (Access and
5 Institutional Controls), and (iii) any instrument by which an interest
6 in real property has been conveyed that confers a right to enforce
7 restrictions on the use of such property (hereinafter referred to as
8 "restrictive easements") pursuant to Section IX (Access and
9 Institutional Controls). At least ten (10) days prior to such
10 conveyance, the Owner Settling Defendants conveying the interest shall
11 also give written notice to EPA and the State of the proposed
12 conveyance, including the name and address of the grantee, and the
13 date on which notice of the Consent Decree, access easements, and/or
14 restrictive easements was given to the grantee.

15 c. In the event of any such conveyance, the Owner Settling
16 Defendant's obligations under this Consent Decree, including, but not
17 limited to, its obligation to provide or secure access and
18 institutional controls, as well as to abide by such institutional
19 controls, pursuant to Section IX (Access and Institutional Controls)
20 of this Consent Decree, shall continue to be met by the Owner Settling
21 Defendant. In no event shall the conveyance release or otherwise
22 affect the liability of the Owner Settling Defendant to comply with
23 all provisions of this Consent Decree, absent the prior written
24 consent of EPA. If the United States approves, the grantee may
25 perform some or all of the Work under this Consent Decree.

26 10. An Owner Settling Defendant, who satisfies the requirements
27 of Paragraph 26 of this Consent Decree within fifteen (15) days of the

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2 effective date of this Consent Decree, shall be in compliance with the
3 requirements of Paragraph 9 of the Consent Decree.

4 VI. PERFORMANCE OF THE WORK BY WORK-PERFORMING SETTTLING DEFENDANTS

5 11. Selection of Supervising Contractor.

6 a. All aspects of the Work to be performed by Work-
7 Performing Settling Defendants pursuant to Sections VI (Performance
8 of the Work by Work-Performing Settling Defendants), VII (Remedy
9 Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV
10 (Emergency Response) of this Consent Decree shall be under the
11 direction and supervision of the Supervising Contractor, the selection
12 of which shall be subject to disapproval by EPA. Within thirty (30)
13 days after the lodging of this Consent Decree, Work-Performing
14 Settling Defendants shall notify EPA in writing of the name, title,
15 and qualifications of any contractor proposed to be the Supervising
16 Contractor. EPA will issue a notice of disapproval or an
17 authorization to proceed. If at any time thereafter, Work-Performing
18 Settling Defendants propose to change a Supervising Contractor, Work-
19 Performing Settling Defendants shall give such notice to EPA and must
20 obtain an authorization to proceed from EPA before the new Supervising
21 Contractor performs, directs, or supervises any Work under this
22 Consent Decree.

23 b. If EPA disapproves a proposed Supervising Contractor,
24 EPA will notify Work-Performing Settling Defendants in writing. Work-
25 Performing Settling Defendants shall submit to EPA a list of
26 contractors, including the qualifications of each contractor, that
27 would be acceptable to them within thirty (30) days of receipt of

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2 EPA's disapproval of the contractor previously proposed. EPA will
3 provide written notice of the names of any contractor(s) that it
4 disapproves and an authorization to proceed with respect to any of the
5 other contractors. Work-Performing Settling Defendants may select any
6 contractor from that list that is not disapproved and shall notify EPA
7 of the name of the contractor selected within twenty-one (21) days of
8 EPA's authorization to proceed.

9 c. If EPA fails to provide written notice of its authorization
10 to proceed or disapproval as provided in this Paragraph and this
11 failure prevents the Work-Performing Settling Defendants from meeting
12 one or more deadlines in a plan approved by the EPA pursuant to this
13 Consent Decree, Work-Performing Settling Defendants may seek relief
14 under the provisions of Section XVIII (Force Majeure) hereof.

15 12. Remedial Action.

16 a. Within (1) sixty (60) of the effective date of the
17 Consent Decree or (2) the date EPA approves the Remedial Design,
18 whichever comes later, Work-Performing Settling Defendants shall
19 submit to EPA, a work plan for the performance of the Remedial Action
20 at the Site ("Remedial Action Work Plan"). The Remedial Action Work
21 Plan shall provide for construction and implementation of the remedy
22 set forth in the ROD and achievement of the Performance Standards, in
23 accordance with this Consent Decree, the ROD, the SOW, and the design
24 plans and specifications developed in accordance with the Remedial
25 Design Work Plan. Upon its approval by EPA, the Remedial Action Work
26 Plan shall be incorporated into and become enforceable under this
27 Consent Decree. At the same time as they submit the Remedial Action

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2 Work Plan, Work-Performing Settling Defendants shall submit to EPA a
3 Health and Safety Plan for field activities required by the Remedial
4 Action Work Plan which conforms to the applicable Occupational Safety
5 and Health Administration and EPA requirements including, but not
6 limited to, 29 C.F.R. § 1910.120.

7 b. The Remedial Action Work Plan shall include the
8 following: (1) the schedule for completion of the Remedial Action;
9 (2) method for selection of the contractor; (3) schedule for
10 developing and submitting other required Remedial Action plans; (4)
11 methodology for implementation of the Construction Quality Assurance
12 Plan; (5) a groundwater monitoring plan; (6) methods for satisfying
13 permitting requirements; (7) methodology for implementation of the
14 Operation and Maintenance Plan; (8) methodology for implementation of
15 the Contingency Plan; (9) tentative formulation of the Remedial Action
16 team; (10) construction quality control plan (by constructor); and
17 (11) procedures and plans for the decontamination of equipment and the
18 disposal of contaminated materials. The Remedial Action Work Plan
19 also shall include a schedule for implementation of all Remedial
20 Action tasks identified in the final design submittal and shall
21 identify the initial formulation of the Work-Performing Settling
22 Defendants' Remedial Action Project Team (including, but not limited
23 to, the Supervising Contractor).

24 c. Upon approval of the Remedial Action Work Plan by EPA,
25 Work-Performing Settling Defendants shall implement the activities
26 required under the Remedial Action Work Plan. The Work-Performing
27 Settling Defendants shall submit to EPA all plans, submittals, or

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2 other deliverables required under the approved Remedial Action Work
3 Plan in accordance with the approved schedule for review and approval
4 pursuant to Section XI (EPA Approval of Plans and Other Submissions).
5 Unless otherwise directed by EPA, Work-Performing Settling Defendants
6 shall not commence physical Remedial Action activities at the Site
7 prior to approval of the Remedial Action Work Plan.

8 13. The Work-Performing Settling Defendants shall continue to
9 implement the Remedial Action and O&M until the Performance Standards
10 are achieved and for so long thereafter as is otherwise required under
11 this Consent Decree.

12 14. Modification of the SOW or Related Work Plans.

13 a. If EPA determines that modification to the work
14 specified in the SOW, work plans developed pursuant to the SOW, or
15 the Remedial Design Work Plan is necessary to achieve and maintain the
16 Performance Standards or to carry out and maintain the effectiveness
17 of the remedy set forth in the ROD, EPA may require that such
18 modification be incorporated in the SOW and/or such work plans.
19 Provided, however, that a modification may only be required pursuant
20 to this Paragraph to the extent that it is consistent with the scope
21 of the remedy selected in the ROD.

22 b. For the purposes of this Paragraph 14 and Paragraphs 49
23 and 50 only, the "scope of the remedy selected in the ROD" is:

- 24 * Perform design studies to evaluate site constraints and
25 design parameters, including consolidation and settlement,
26 lateral and vertical support, dewatering sediments, and the
27 hydrogeologic impact of filling East Doane Lake remnant and

1
2 the open excavation in the Lake Area (previously referred to
3 as the Phase III Area) portion of the Rhone-Poulenc
4 property;

5
6 * Construction of an OCF, which has a leachate collection
7 system and allows for implementation of future Rhone-Poulenc
8 cleanup actions, on the Gould property;

9
10 * Excavation and dewatering of East Doane Lake sediments
11 contaminated above specified cleanup levels;

12
13 * Excavation of the remaining battery casings on the Gould
14 property;

15
16 * Treatment (stabilization or fixation) of the lead fines
17 stockpile (S-15), the screened Gould excavation stockpile
18 (S-22); and other lead contaminated material identified as
19 principal threat waste;

20
21 * Consolidating contaminated material, including sediments,
22 treated and untreated stockpiled materials, casings, soil
23 and debris in the lined and capped OCF;

24
25 * Filling the East Doane Lake remnant and the open excavation
26 in the Lake Area of the Rhone-Poulenc property;

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* Institutional controls, such as deed restrictions or environmental protection easements, which provide access to EPA for the purpose of evaluating the effectiveness of the remedial action, and which limit future use of properties within the Site to (1) industrial operations or other uses compatible with the protective level of cleanup achieved after implementation of the selected remedial action, and (2) uses which do not damage the OCF cap and liner system or cause releases of buried materials;

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* Performing ground-water monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and

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* Long-term operation and maintenance requirements and reviews conducted no less often than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment.

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* The selected remedy will also allow off-site disposal of contaminated materials from the Gould site at regulated Subtitle D or Subtitle C disposal facilities. Off-site disposal may be necessary because of the uncertainty associated with final site quantities and design constraints. The selected remedy defers a cleanup decision on subsurface waste materials located on the Rhone-Poulenc

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2 and ESCO properties.

3 c. If Work-Performing Settling Defendants object to any
4 modification determined by EPA to be necessary pursuant to this
5 Paragraph, they may seek dispute resolution pursuant to Section XIX
6 (Dispute Resolution), Paragraph 66 (record review). The SOW and/or
7 related work plans shall be modified in accordance with final
8 resolution of the dispute.

9 d. Work-Performing Settling Defendants shall implement any
10 work required by any modifications incorporated in the SOW and/or in
11 work plans developed pursuant to the SOW in accordance with this
12 Paragraph.

13 e. Nothing in this Paragraph shall be construed to limit
14 EPA's authority to require performance of further response actions as
15 otherwise provided in this Consent Decree.

16 15. Settling Defendants acknowledge and agree that nothing in
17 this Consent Decree, the SOW, or the Remedial Design or Remedial
18 Action Work Plans constitutes a warranty or representation of any kind
19 by Plaintiff that compliance with the work requirements set forth in
20 the SOW and the Work Plans will achieve the Performance Standards.

21 16. Work-Performing Settling Defendants shall, prior to any off-
22 Site shipment of Waste Material from the Site to an out-of-state waste
23 management facility, provide written notification to the appropriate
24 state environmental official in the receiving facility's state and to
25 the EPA Project Coordinator of such shipment of Waste Material.
26 However, this notification requirement shall not apply to any off-Site
27 shipments when the total volume of all such shipments will not exceed

1
2 10 cubic yards.

3 a. The Work-Performing Settling Defendants shall include in
4 the written notification the following information, where available:
5 (1) the name and location of the facility to which the Waste Material
6 is to be shipped; (2) the type and quantity of the Waste Material to
7 be shipped; (3) the expected schedule for the shipment of the Waste
8 Material; and (4) the method of transportation. The Work-Performing
9 Settling Defendants shall notify the state in which the planned
10 receiving facility is located of major changes in the shipment plan,
11 such as a decision to ship the Waste Material to another facility
12 within the same state, or to a facility in another state.

13 b. The identity of the receiving facility and state will be
14 determined by the Work-Performing Settling Defendants following the
15 award of the contract for Remedial Action construction. The Work-
16 Performing Settling Defendants shall provide the information required
17 by Paragraph 16.a as soon as practicable after the award of the
18 contract and before the Waste Material is actually shipped.

19 VII. REMEDY REVIEW

20 17. Periodic Review. Work-Performing Settling Defendants shall
21 conduct any studies and investigations as requested by EPA, in order
22 to permit EPA to conduct reviews of whether the Remedial Action is
23 protective of human health and the environment at least every five
24 years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c),
25 and any applicable regulations.

26 18. EPA Selection of Further Response Actions. If EPA
27 determines, at any time, that the Remedial Action is not protective

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2 of human health and the environment, EPA may select further response
3 actions for the Site in accordance with the requirements of CERCLA and
4 the NCP.

5 19. Opportunity To Comment. Work-Performing Settling Defendants
6 and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§
7 9613(k)(2) or 9617, the public, will be provided with an opportunity
8 to comment on any further response actions proposed by EPA as a result
9 of the review conducted pursuant to Section 121(c), 42 U.S.C. §
10 9621(c), of CERCLA and to submit written comments for the record
11 during the comment period.

12 20. Work-Performing Settling Defendants' Obligation To Perform
13 Further Response Actions. If EPA selects further response actions for
14 the Site, the Work-Performing Settling Defendants shall undertake such
15 further response actions to the extent that the reopener conditions
16 in Paragraph 81 or Paragraph 82 (United States' reservations of
17 liability based on unknown conditions or new information) are
18 satisfied. Work-Performing Settling Defendants may invoke the
19 procedures set forth in Section XIX (Dispute Resolution) to dispute
20 (1) EPA's determination that the reopener conditions of Paragraph 81
21 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff) are
22 satisfied, (2) EPA's determination that the Remedial Action is not
23 protective of human health and the environment, or (3) EPA's selection
24 of further response actions. Disputes pertaining to whether the
25 Remedial Action is protective or to EPA's selection of further
26 response actions shall be resolved pursuant to Paragraph 66 (record
27 review).

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2 21. Submissions of Plans. If Work-Performing Settling
3 Defendants are required to perform further response actions pursuant
4 to Paragraph 20, they shall submit a plan for such work to EPA for
5 approval in accordance with the procedures set forth in Section VI
6 (Performance of the Work by Work-Performing Settling Defendants) and
7 shall implement the plan approved by EPA in accordance with the
8 provisions of this Decree.

9
10 VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

11 22. Work-Performing Settling Defendants shall use quality
12 assurance, quality control, and chain of custody procedures for all
13 samples in accordance with "EPA Requirements for Quality Assurance
14 Project Plans for Environmental Data Operation," (EPA QA/R5;
15 "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent
16 amendments to such guidelines upon notification by EPA to Work-
17 Performing Settling Defendants of such amendment. Amended guidelines
18 shall apply only to procedures conducted after such notification.
19 Prior to the commencement of any monitoring project under this Consent
20 Decree, Work-Performing Settling Defendants shall submit to EPA for
21 approval, a Quality Assurance Project Plan ("QAPP") that is consistent
22 with the SOW, the NCP and applicable guidance documents. If relevant
23 to the proceeding, the Parties agree that validated sampling data
24 generated in accordance with the QAPP(s) and reviewed and approved by
25 EPA shall be admissible as evidence, without objection, in any
26 proceeding under this Decree. Work-Performing Settling Defendants
27 shall ensure that EPA personnel and its authorized representatives are

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2 allowed access at reasonable times to all laboratories utilized by
3 Work-Performing Settling Defendants in implementing this Consent
4 Decree. In addition, Work-Performing Settling Defendants shall ensure
5 that such laboratories shall analyze all samples submitted by EPA
6 pursuant to the QAPP for quality assurance monitoring. Work-
7 Performing Settling Defendants shall ensure that the laboratories they
8 utilize for the analysis of samples taken pursuant to this Decree
9 perform all analyses according to accepted EPA methods. Accepted EPA
10 methods consist of those methods which are documented in the "Contract
11 Lab Program Statement of Work for Inorganic Analysis" and the
12 "Contract Lab Program Statement of Work for Organic Analysis," dated
13 February 1988, and any amendments made thereto during the course of
14 the implementation of this Decree. Work-Performing Settling
15 Defendants shall ensure that all laboratories they use for analysis
16 of samples taken pursuant to this Consent Decree participate in an EPA
17 or EPA-equivalent QA/QC program. Work-Performing Settling Defendants
18 shall ensure that all field methodologies utilized in collecting
19 samples for subsequent analysis pursuant to this Decree will be
20 conducted in accordance with the procedures set forth in the QAPP
21 approved by EPA.

22 23. Upon request, the Work-Performing Settling Defendants shall
23 allow split or duplicate samples to be taken by EPA or its authorized
24 representatives. Work-Performing Settling Defendants shall notify EPA
25 not less than ten (10) days in advance of any sample collection
26 activity unless shorter notice is agreed to by EPA. In addition, EPA
27 shall have the right to take any additional samples that EPA deems

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2 necessary. Upon request, EPA shall allow the Work-Performing Settling
3 Defendants to take split or duplicate samples of any samples it takes
4 as part of the Plaintiff's oversight of the Work-Performing Settling
5 Defendants' implementation of the Work.

6 24. Work-Performing Settling Defendants shall submit to EPA four
7 (4) copies of the results of all sampling and/or tests or other data
8 obtained or generated by or on behalf of Work-Performing Settling
9 Defendants with respect to the Site and/or the implementation of this
10 Consent Decree unless EPA agrees otherwise.

11 25. Notwithstanding any provision of this Consent Decree, the
12 United States hereby retains all of its information gathering and
13 inspection authorities and rights, including enforcement actions
14 related thereto, under CERCLA, RCRA and any other applicable statutes
15 or regulations.

16 IX. ACCESS AND INSTITUTIONAL CONTROLS

17 26. If the Site, or any other property where access and/or land
18 use restrictions are needed to implement this Consent Decree, is owned
19 or controlled by any of the Settling Defendants, such Settling
20 Defendants shall:

21 a. commencing on the date of lodging of this Consent
22 Decree, provide the United States, the State, and their
23 representatives, including EPA and its contractors, with access
24 at all reasonable times to the Site, or such other property, for
25 the purpose of conducting any activity related to this Consent
26 Decree including, but not limited to, the following activities:

27 i. Monitoring the Work;

- 1
- 2 ii. Verifying any data or information submitted to the
- 3 United States;
- 4 iii. Conducting investigations relating to
- 5 contamination at or near the Site;
- 6 iv. Obtaining samples;
- 7 v. Assessing the need for, planning, or
- 8 implementing additional response actions at or near the Site;
- 9 vi. Implementing the Work pursuant to the conditions
- 10 set forth in Paragraph 85 of this Consent Decree;
- 11 vii. Inspecting and copying records, operating logs,
- 12 contracts, or other documents maintained or generated by Settling
- 13 Defendants or their agents, consistent with Section XXIV (Access
- 14 to Information);
- 15 viii. Assessing Settling Defendants' compliance with this
- 16 Consent Decree; and
- 17 ix. Determining whether the Site or other property is
- 18 being used in a manner that is prohibited or restricted, or that
- 19 may need to be prohibited or restricted, by or pursuant to this
- 20 Consent Decree;
- 21 b. commencing on the date of lodging of this Consent
- 22 Decree, refrain from using the Site, or such other property, in
- 23 any manner that would interfere with or adversely affect the
- 24 integrity or protectiveness of the remedial measures to be
- 25 implemented pursuant to this Consent Decree. Unless otherwise
- 26 approved by EPA in writing, the Site shall not be subject to any
- 27 of the following uses or actions:
- 28

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2 i. residential or agricultural uses on properties within
3 the Site (which is not intended to prohibit commercial
4 scale recycling or composting activities);
5 ii. ;commercial uses, as defined in the City of Portland
6 Zoning Code;
7 iii. actions that may disturb or damage or otherwise
8 interfere with the structural integrity of the OCF,
9 the OCF cap, the OCF liner, the OCF leachate collection
10 system, or the OCF detection monitoring system; and
11 iv. actions that may disturb or damage the integrity or
12 effectiveness of any other remedial actions undertaken
13 pursuant to this Consent Decree; and

14 c. execute and record in the Recorder's Office or Registry
15 of Deeds or other appropriate land records office of Multnomah
16 County, State of Oregon, an easement, running with the land, that
17 (i) grants a right of access for the purpose of conducting any
18 activity related to this Consent Decree including, but not
19 limited to, those activities listed in Paragraph 26(a) of this
20 Consent Decree, and (ii) grants the right to enforce the land use
21 restrictions listed in Paragraph 26(b) of this Consent Decree, or
22 other restrictions that EPA determines are necessary to
23 implement, ensure non-interference with, or ensure the
24 protectiveness of the remedial measures to be performed pursuant
25 to this Consent Decree. Such Settling Defendants shall grant the
26 access rights and the rights to enforce the land use restrictions
27 to (i) the United States, on behalf of EPA, and its

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2 representatives, (ii) the State and its representatives, (iii)
3 the other Settling Defendants and their representatives, and/or
4 (iv) other appropriate grantees. Such Settling Defendants shall,
5 within 45 days of entry of this Consent Decree, submit to EPA for
6 review and approval with respect to such property:

7 i. A draft easement, in substantially the form
8 attached hereto as Appendix D, that is enforceable under the
9 laws of the State of Oregon, free and clear of all prior
10 liens and encumbrances (except as approved by EPA), and
11 acceptable under the Attorney General's Title Regulations
12 promulgated pursuant to 40 U.S.C. § 255; and

13 ii. a current title commitment or report prepared in
14 accordance with the U.S. Department of Justice Standards for
15 the Preparation of Title Evidence in Land Acquisitions by
16 the United States (1970) (the "Standards").

17 Within fifteen (15) days of EPA's approval and acceptance of the
18 easement, such Settling Defendants shall update the title search
19 and, if it is determined that nothing has occurred since the
20 effective date of the commitment or report to affect the title
21 adversely, record the easement with the Recorder's Office or
22 Registry of Deeds or other appropriate office of Multnomah
23 County, State of Oregon. Within thirty (30) days of recording
24 the easement, such Settling Defendants shall provide EPA with
25 final title evidence acceptable under the Standards, and a
26 certified copy of the original recorded easement showing the
27 clerk's recording stamps.

28 d. Filing and complying with the terms of an EPA approved
Environmental Protection Easement and Restrictive Covenant shall
constitute compliance with Paragraph 26.

27. If the Site, or any other property where access and/or land use

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2 restrictions are needed to implement this Consent Decree, is owned or
3 controlled by persons other than any of the Settling Defendants, Work-
4 Performing Settling Defendants shall use best efforts to secure from
5 such persons:

6 a. an agreement to provide access thereto for Work-
7 Performing Settling Defendants, as well as for the United States
8 on behalf of EPA, and the State, as well as their representatives
9 (including contractors), for the purpose of conducting any
10 activity related to this Consent Decree including, but not
11 limited to, those activities listed in Paragraph 26(a) of this
12 Consent Decree;

13 b. an agreement, enforceable by the Work-Performing
14 Settling Defendants and the United States, to abide by the
15 obligations and restrictions established by Paragraph 26(b) of
16 this Consent Decree, or that are otherwise necessary to
17 implement, ensure non-interference with, or ensure the
18 protectiveness of the remedial measures to be performed pursuant
19 to this Consent Decree; and

20 c. the execution and recordation in the Recorder's Office
21 or Registry of Deeds or other appropriate land records office of
22 Multnomah County, State of Oregon, of an easement, running with
23 the land, that (i) grants a right of access for the purpose of
24 conducting any activity related to this Consent Decree including,
25 but not limited to, those activities listed in Paragraph 26(a) of
26 this Consent Decree, and (ii) grants the right to enforce the
27 land use restrictions listed in Paragraph 26(b) of this Consent

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2 Decree, or other restrictions that EPA determines are necessary
3 to implement, ensure non-interference with, or ensure the
4 protectiveness of the remedial measures to be performed pursuant
5 to this Consent Decree. The access rights and/or rights to
6 enforce land use restrictions shall be granted to (i) the United
7 States, on behalf of EPA, and its representatives, (ii) the State
8 and its representatives, (iii) the other Work-Performing Settling
9 Defendants and their representatives, and/or (iv) other
10 appropriate grantees. Within forty-five (45) days of entry of
11 this Consent Decree, Work-Performing Settling Defendants shall
12 submit to EPA for review and approval with respect to such
13 property:

14 i. A draft easement, in substantially the form
15 attached hereto as Appendix D, that is enforceable under the
16 laws of the State of Oregon, free and clear of all prior
17 liens and encumbrances (except as approved by EPA), and
acceptable under the Attorney General's Title Regulations
promulgated pursuant to 40 U.S.C. § 255; and

18 ii. a current title commitment or report prepared in
19 accordance with the U.S. Department of Justice Standards for
the Preparation of Title Evidence in Land Acquisitions by
the United States (1970) (the "Standards").

20 Within fifteen (15) days of EPA's approval and acceptance of the
21 easement, Work-Performing Settling Defendants shall update the
22 title search and, if it is determined that nothing has occurred
23 since the effective date of the commitment or report to affect
24 the title adversely, the easement shall be recorded with the
25 Recorder's Office or Registry of Deeds or other appropriate
26 office of Multnomah County, State of Oregon. Within thirty (30)
27 days of the recording of the easement, Work-Performing Settling

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2 Defendants shall provide EPA with final title evidence acceptable
3 under the Standards, and a certified copy of the original
4 recorded easement showing the clerk's recording stamps.

5 28. For purposes of Paragraph 27 of this Consent Decree, "best
6 efforts" includes the payment of reasonable sums of money in
7 consideration of access, access easements, land use restrictions,
8 and/or restrictive easements. If any access or land use restriction
9 agreements required by Paragraphs 27(a) or 27(b) of this Consent
10 Decree are not obtained within forty-five (45) days of the date of
11 entry of this Consent Decree, or any access easements or restrictive
12 easements required by Paragraph 27(c) of this Consent Decree are not
13 submitted to EPA in draft form within forty-five (45) days of the date
14 of entry of this Consent Decree, Work-Performing Settling Defendants
15 shall promptly notify the United States in writing, and shall include
16 in that notification a summary of the steps that Work-Performing
17 Settling Defendants have taken to attempt to comply with Paragraph 27
18 of this Consent Decree. The United States may, as it deems
19 appropriate, assist Work-Performing Settling Defendants in obtaining
20 access or land use restrictions, either in the form of contractual
21 agreements or in the form of easements running with the land. Work-
22 Performing Settling Defendants shall reimburse the United States in
23 accordance with the procedures in Section XVI (Reimbursement of
24 Response Costs), for all costs incurred by the United States in
25 obtaining such access and/or land use restrictions including, but not
26 limited to, the cost of attorney time and the amount of monetary
27 consideration paid.

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2 29. If EPA determines that land use restrictions in the form of
3 state or local laws, regulations, ordinances or other governmental
4 controls are needed to implement the remedy selected in the ROD,
5 ensure the integrity and protectiveness thereof, or ensure non-
6 interference therewith, Work-Performing Settling Defendants and Owner
7 Settling Defendants shall cooperate with EPA's efforts to secure such
8 governmental controls.

9 30. Notwithstanding any provision of this Consent Decree, the
10 United States retains all of its access authorities and rights, as
11 well as all of its rights to require land use restrictions, including
12 enforcement authorities related thereto, under CERCLA, RCRA and any
13 other applicable statute or regulations.

14 X. REPORTING REQUIREMENTS

15 31. In addition to any other requirement of this Consent Decree,
16 Work-Performing Settling Defendants shall submit to EPA four
17 (4) copies of written monthly progress reports that: (a) describe the
18 actions which have been taken toward achieving compliance with this
19 Consent Decree during the previous month; (b) include a summary of all
20 results of sampling and tests and all other data received or generated
21 by Work-Performing Settling Defendants or their contractors or agents
22 in the previous month; (c) identify all work plans, plans and other
23 deliverables required by this Consent Decree completed and submitted
24 during the previous month; (d) describe all actions, including, but
25 not limited to, data collection and implementation of work plans,
26 which are scheduled for the next four (4) weeks and provide other
27 information relating to the progress of construction, including, but

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2 not limited to, critical path diagrams, Gantt charts and Pert charts;
3 (e) include information regarding percentage of completion, unresolved
4 delays encountered or anticipated that may affect the future schedule
5 for implementation of the Work, and a description of efforts made to
6 mitigate those delays or anticipated delays; (f) include any
7 modifications to the work plans or other schedules that Work-
8 Performing Settling Defendants have proposed to EPA or that have been
9 approved by EPA; and (g) describe all activities undertaken in support
10 of the Community Relations Plan during the previous month and those
11 to be undertaken in the next six (6) weeks. Work-Performing Settling
12 Defendants shall submit these progress reports to EPA by the tenth day
13 of every month following the lodging of this Consent Decree until EPA
14 notifies the Work-Performing Settling Defendants pursuant to Paragraph
15 50.b of Section XIV (Certification of Completion). If requested by
16 EPA, Work-Performing Settling Defendants shall also provide briefings
17 for EPA to discuss the progress of the Work.

18 32. The Work-Performing Settling Defendants shall notify EPA of
19 any change in the schedule described in the monthly progress report
20 for the performance of any activity, including, but not limited to,
21 data collection and implementation of work plans, no later than seven
22 (7) days prior to the performance of the activity.

23 33. Upon the occurrence of any event during performance of the
24 Work that Work-Performing Settling Defendants are required to report
25 pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304
26 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42
27 U.S.C. § 11004, Work-Performing Settling Defendants shall within one

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2 (1) working day of the onset of such event orally notify the EPA
3 Project Coordinator or the Alternate EPA Project Coordinator (in the
4 event of the unavailability of the EPA Project Coordinator), or, in
5 the event that neither the EPA Project Coordinator or Alternate EPA
6 Project Coordinator is available, the Emergency Response Section,
7 Region 10, United States Environmental Protection Agency. These
8 reporting requirements are in addition to the reporting required by
9 CERCLA Section 103 or EPCRA Section 304.

10 34. Within twenty (20) days of the onset of such an event, Work-
11 Performing Settling Defendants shall furnish to Plaintiff a written
12 report, signed by the Work-Performing Settling Defendants' Project
13 Coordinator, setting forth the events which occurred and the measures
14 taken, and to be taken, in response thereto. Within 30 days of the
15 conclusion of such an event, Work-Performing Settling Defendants shall
16 submit a report setting forth all actions taken in response thereto.

17 35. Work-Performing Settling Defendants shall submit four (4)
18 copies of all plans, reports, and data required by the SOW, the
19 Remedial Design Work Plan, the Remedial Action Work Plan, or any other
20 approved plans to EPA in accordance with the schedules set forth in
21 such plans.

22 36. All reports and other documents submitted by Work-Performing
23 Settling Defendants to EPA (other than the monthly) progress reports
24 referred to above) which purport to document Work-Performing Settling
25 Defendants' compliance with the terms of this Consent Decree shall be
26 signed by an authorized representative of the Work-Performing Settling
27 Defendants.

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2 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

3 37. After review of any plan, report or other item (the
4 "Submission") which is required to be submitted for approval pursuant
5 to this Consent Decree, EPA shall: (a) approve, in whole or in part,
6 the Submission; (b) approve the Submission upon specified conditions;
7 (c) modify the Submission to cure the deficiencies; (d) disapprove,
8 in whole or in part, the submission, directing that the Settling
9 Defendants responsible for the Submission modify the Submission; or
10 (e) any combination of the above. However, EPA shall not modify a
11 Submission without first providing Settling Defendant(s) responsible
12 for the Submission at least one notice of deficiency and an
13 opportunity to cure within fourteen (14) days, except where to do so
14 would cause serious disruption to the Work or where previous
15 submission(s) have been disapproved due to material defects and the
16 deficiencies in the Submission under consideration indicate a bad
17 faith lack of effort to submit an acceptable deliverable.

18 38. In the event of approval, approval upon conditions, or
19 modification by EPA, pursuant to Paragraph 37(a), (b), or (c),
20 Settling Defendant(s) responsible for the Submission shall proceed to
21 take any action required by the plan, report, or other item, as
22 approved or modified by EPA subject only to their right to invoke the
23 Dispute Resolution procedures set forth in Section XIX (Dispute
24 Resolution) with respect to the modifications or conditions made by
25 EPA. In the event that EPA modifies the Submission to cure the
26 deficiencies pursuant to Paragraph 37(c) and the Submission has a
27 material defect, EPA retains its right to seek stipulated penalties,

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2 as provided in Section XX (Stipulated Penalties).

3 39. a. Upon receipt of a notice of disapproval pursuant to
4 Paragraph 37(d), Settling Defendant(s) responsible for the Submission
5 shall, within fourteen (14) days or such longer time as specified by
6 EPA in such notice, correct the deficiencies and resubmit the plan,
7 report, or other item for approval. Any stipulated penalties
8 applicable to the Submission, as provided in Section XX, shall accrue
9 during the fourteen (14) day period or otherwise specified period but
10 shall not be payable unless the resubmission is disapproved or
11 modified due to a material defect as provided in Paragraphs 40 and 41.

12 b. Notwithstanding the receipt of a notice of disapproval
13 pursuant to Paragraph 37(d), Settling Defendant(s) responsible for the
14 Submission shall proceed, at the direction of EPA, to take any action
15 required by any non-deficient portion of the Submission.
16 Implementation of any non-deficient portion of a Submission shall not
17 relieve Settling Defendants responsible for the Submission of any
18 liability for stipulated penalties under Section XX (Stipulated
19 Penalties).

20 40. In the event that a resubmitted plan, report or other item,
21 or portion thereof, is disapproved by EPA, EPA may again require the
22 Settling Defendants responsible for the Submission to correct the
23 deficiencies, in accordance with the preceding Paragraphs. EPA also
24 retains the right to modify or develop the plan, report or other
25 item. The Settling Defendant(s) responsible for the Submission shall
26 implement any such plan, report, or item as modified or developed by
27 EPA, subject only to their right to invoke the procedures set forth

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2 in Section XIX (Dispute Resolution).

3 41. If upon resubmission, a plan, report, or item is disapproved
4 or modified by EPA due to a material defect, Settling Defendant(s)
5 responsible for the Submission shall be deemed to have failed to
6 submit such plan, report, or item timely and adequately unless the
7 Settling Defendants responsible for the Submission invoke the dispute
8 resolution procedures set forth in Section XIX (Dispute Resolution)
9 and EPA's action is overturned pursuant to that Section. The
10 provisions of Section XIX (Dispute Resolution) and Section XX
11 (Stipulated Penalties) shall govern the implementation of the Work and
12 accrual and payment of any stipulated penalties during Dispute
13 Resolution. If EPA's disapproval or modification is upheld,
14 stipulated penalties shall accrue for such violation from the date on
15 which the initial submission was originally required, as provided in
16 Section XX.

17 42. All plans, reports, and other items required to be submitted
18 to EPA under this Consent Decree shall, upon approval or modification
19 by EPA, be enforceable under this Consent Decree. In the event EPA
20 approves or modifies a portion of a plan, report, or other item
21 required to be submitted to EPA under this Consent Decree, the
22 approved or modified portion shall be enforceable under this Consent
23 Decree.

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2 XII. PROJECT COORDINATORS

3 43. Within twenty (20) days of lodging this Consent Decree,
4 Work-Performing Settling Defendants and EPA will notify each other,
5 in writing, of the name, address and telephone number of their
6 respective designated Project Coordinators and Alternate Project
7 Coordinators. If a Project Coordinator or Alternate Project
8 Coordinator initially designated is changed, the identity of the
9 successor will be given to the other Parties at least five (5) working
10 days before the changes occur, unless impracticable, but in no event
11 later than the actual day the change is made. The Work-Performing
12 Settling Defendants' Project Coordinator shall be subject to
13 disapproval by EPA and shall have the technical expertise sufficient
14 to adequately oversee all aspects of the Work. The Work-Performing
15 Settling Defendants' Project Coordinator shall not be an attorney for
16 any of the Work-Performing Settling Defendants in this matter. The
17 Work-Performing Settling Defendants' Project Coordinator may assign
18 other representatives, including other contractors, to serve as a Site
19 representative for oversight of performance of daily operations during
20 remedial activities.

21 44. Plaintiff may designate other representatives, including,
22 but not limited to, EPA employees, and federal contractors and
23 consultants, to observe and monitor the progress of any activity
24 undertaken pursuant to this Consent Decree. EPA's Project Coordinator
25 and Alternate Project Coordinator shall have the authority lawfully
26 vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator
27 (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In

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2 addition, EPA's Project Coordinator or Alternate Project Coordinator;
3 shall have authority, consistent with the National Contingency Plan,
4 to halt any Work required by this Consent Decree and to take any
5 necessary response action when s/he determines that conditions at the
6 Site constitute an emergency situation or may present an immediate
7 threat to public health or welfare or the environment due to release
8 or threatened release of Waste Material.

9
10 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

11 45. Within thirty (30) days of entry of this Consent Decree,
12 Work-Performing Settling Defendants shall establish and maintain
13 financial security in the amount of \$12,000,000 in one or more of the
14 following forms:

- 15 (a) A surety bond guaranteeing performance of the Work;
16 (b) One or more irrevocable letters of credit equalling the
17 total estimated cost of the Work;
18 (c) A trust fund;
19 (d) A guarantee to perform the Work by one or more parent
20 corporations or subsidiaries, or by one or more unrelated corporations
21 that have a substantial business relationship with at least one of the
22 Work-Performing Settling Defendants; or
23 (e) A demonstration that one or more of the Work-Performing
24 Settling Defendants satisfy the requirements of 40 C.F.R. Part
25 264.143(f);

26 46. If the Work-Performing Settling Defendants seek to
27 demonstrate the ability to complete the Work through a guarantee by

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2 a third party pursuant to Paragraph 45(d) of this Consent Decree,
3 Work-Performing Settling Defendants shall demonstrate that the
4 guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f).
5 If Work-Performing Settling Defendants seek to demonstrate their
6 ability to complete the Work by means of the financial test or the
7 corporate guarantee pursuant to Paragraph 45(d) or (e), they shall
8 resubmit sworn statements conveying the information required by 40
9 C.F.R. Part 264.143(f) annually, on the anniversary of the effective
10 date of this Consent Decree. In the event that EPA determines at any
11 time that the financial assurances provided pursuant to this Section
12 are inadequate, Work-Performing Settling Defendants shall, within 30
13 days of receipt of notice of EPA's determination, obtain and present
14 to EPA for approval one of the other forms of financial assurance
15 listed in Paragraph 45 of this Consent Decree. Work-Performing
16 Settling Defendants' inability to demonstrate financial ability to
17 complete the Work shall not excuse performance of any activities
18 required under this Consent Decree.

19 47. If Work-Performing Settling Defendants can show that the
20 estimated cost to complete the remaining Work has diminished below the
21 amount set forth in Paragraph 45 above after entry of this Consent
22 Decree, Work-Performing Settling Defendants may, on any anniversary
23 date of entry of this Consent Decree, or at any other time agreed to
24 by the Parties, reduce the amount of the financial security provided
25 under this Section to the estimated cost of the remaining work to be
26 performed. Work-Performing Settling Defendants shall submit a
27 proposal for such reduction to EPA, in accordance with the

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2 requirements of this Section, and may reduce the amount of the
3 security upon approval by EPA. In the event of a dispute, Work-
4 Performing Settling Defendants may reduce the amount of the security
5 in accordance with the final administrative or judicial decision
6 resolving the dispute.

7 48. Work-Performing Settling Defendants may change the form of
8 financial assurance provided under this Section at any time, upon
9 notice to and approval by EPA, provided that the new form of assurance
10 meets the requirements of this Section. In the event of a dispute,
11 Work-Performing Settling Defendants may change the form of the
12 financial assurance only in accordance with the final administrative
13 or judicial decision resolving the dispute.

14 XIV. CERTIFICATION OF COMPLETION

15 49. Completion of the Remedial Action

16 a. Within 90 days after Work-Performing Settling Defendants
17 conclude that the Remedial Action has been fully performed and the
18 Performance Standards have been attained, Work-Performing Settling
19 Defendants shall schedule and conduct a pre-certification inspection
20 to be attended by Work-Performing Settling Defendants and EPA. If,
21 after the pre-certification inspection, the Work-Performing Settling
22 Defendants still believe that the Remedial Action has been fully
23 performed and the Performance Standards have been attained, they shall
24 submit a written report requesting certification to EPA for approval
25 pursuant to Section XI (EPA Approval of Plans and Other Submissions)
26 within thirty (30) days of the inspection.* In the report, a
27 registered professional engineer and the Work-Performing Settling

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2 Defendants' Project Coordinator shall state that the Remedial Action
3 has been completed in full satisfaction of the requirements of this
4 Consent Decree. The written report shall include as-built drawings
5 signed and stamped by a professional engineer. The report shall
6 contain the following statement, signed by a responsible corporate
7 official of a Work Performing Settling Defendant or the Work-
8 Performing Settling Defendants' Project Coordinator:

9 "To the best of my knowledge, after thorough investigation,
10 I certify that the information contained in or accompanying
11 this submission is true, accurate and complete. I am aware
12 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

13 If, after completion of the pre-certification inspection and receipt
14 and review of the written report, EPA determines that the Remedial
15 Action or any portion thereof has not been completed in accordance
16 with this Consent Decree or that the Performance Standards have not
17 been achieved, EPA will notify Work-Performing Settling Defendants in
18 writing of the activities that must be undertaken by Work-Performing
19 Settling Defendants pursuant to this Consent Decree to complete the
20 Remedial Action and achieve the Performance Standards. Provided,
21 however, that EPA may only require Work-Performing Settling Defendants
22 to perform such activities pursuant to this Paragraph to the extent
23 that such activities are consistent with the "scope of the remedy
24 selected in the ROD," as that term is defined in Paragraph 14.b. EPA
25 will set forth in the notice a schedule for performance of such
26 activities consistent with the Consent Decree and the SOW or require
27 the Work-Performing Settling Defendants to submit a schedule to EPA

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2 for approval pursuant to Section XI (EPA Approval of Plans and Other
3 Submissions). Work-Performing Settling Defendants shall perform all
4 activities described in the notice in accordance with the
5 specifications and schedules established pursuant to this Paragraph,
6 subject to their right to invoke the dispute resolution procedures set
7 forth in Section XIX (Dispute Resolution).

8 b. If EPA concludes, based on the initial or any subsequent
9 report requesting Certification of Completion, that the Remedial
10 Action has been performed in accordance with this Consent Decree and
11 that the Performance Standards have been achieved, EPA will so certify
12 in writing to Work-Performing Settling Defendants. This certification
13 shall constitute the Certification of Completion of the Remedial
14 Action for purposes of this Consent Decree, including, but not limited
15 to, Section XXI (Covenants Not to Sue by Plaintiff). Certification
16 of Completion of the Remedial Action shall not affect Settling
17 Defendants' obligations under this Consent Decree.

18 50. Completion of the Work

19 a. Within thirty (30) days after Work-Performing Settling
20 Defendants conclude that all phases of the Work (including O & M),
21 have been fully performed, Work-Performing Settling Defendants shall
22 schedule and conduct a pre-certification inspection to be attended by
23 Work-Performing Settling Defendants and EPA. If, after the pre-
24 certification inspection, the Work-Performing Settling Defendants
25 still believe that the Work has been fully performed, Work-Performing
26 Settling Defendants shall submit a written report by a registered
27 professional engineer stating that the Work has been completed in full

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2 satisfaction of the requirements of this Consent Decree. The report
3 shall contain the following statement, signed by a responsible
4 corporate official of a Work Settling Defendant or the Work-Performing
5 Settling Defendants' Project Coordinator:

6 "To the best of my knowledge, after thorough investigation,
7 I certify that the information contained in or accompanying
8 this submission is true, accurate and complete. I am aware
9 that there are significant penalties for submitting false
10 information, including the possibility of fine and
11 imprisonment for knowing violations."

12 If, after review of the written report, EPA determines that any
13 portion of the Work has not been completed in accordance with this
14 Consent Decree, EPA will notify Work-Performing Settling Defendants
15 in writing of the activities that must be undertaken by Work-
16 Performing Settling Defendants pursuant to this Consent Decree to
17 complete the Work. Provided, however, that EPA may only require Work-
18 Performing Settling Defendants to perform such activities pursuant to
19 this Paragraph to the extent that such activities are consistent with
20 the "scope of the remedy selected in the ROD," as that term is defined
21 in Paragraph 14.b. EPA will set forth in the notice a schedule for
22 performance of such activities consistent with the Consent Decree and
23 the SOW or require the Work-Performing Settling Defendants to submit
24 a schedule to EPA for approval pursuant to Section XI (EPA Approval
25 of Plans and Other Submissions). Work-Performing Settling Defendants
26 shall perform all activities described in the notice in accordance
27 with the specifications and schedules established therein, subject to
28 their right to invoke the dispute resolution procedures set forth in
Section XIX (Dispute Resolution).

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2 b. If EPA concludes, based on the initial or any subsequent
3 request for Certification of Completion by Work-Performing Settling
4 Defendants that the Work has been performed in accordance with this
5 Consent Decree, EPA will so notify the Work-Performing Settling
6 Defendants in writing.

7 XV. EMERGENCY RESPONSE

8 51. In the event of any action or occurrence during the
9 performance of the Work which causes or threatens a release of Waste
10 Material from the Site that constitutes an emergency situation or may
11 present an immediate threat to public health or welfare or the
12 environment, Work-Performing Settling Defendants shall, subject to
13 Paragraph 52, immediately take all appropriate action to prevent,
14 abate, or minimize such release or threat of release, and shall
15 immediately notify the EPA's Project Coordinator, or, if the Project
16 Coordinator is unavailable, EPA's Alternate Project Coordinator. If
17 neither of these persons is available, the Work-Performing Settling
18 Defendants shall notify the EPA (Emergency Response Unit), Region 10

19 Work-Performing Settling Defendants shall take such actions in
20 consultation with EPA's Project Coordinator or other available
21 authorized EPA officer and in accordance with all applicable
22 provisions of the Health and Safety Plans, the Contingency Plans, and
23 any other applicable plans or documents developed pursuant to the SOW.
24 In the event that Work-Performing Settling Defendants fail to take
25 appropriate response action as required by this Section, and EPA take
26 such action instead, Work-Performing Settling Defendants shall
27 reimburse EPA all costs of the response action not inconsistent with

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2 the NCP pursuant to Section XVI (Reimbursement of Response Costs).

3 52. Nothing in the preceding Paragraph or in this Consent Decree
4 shall be deemed to limit any authority of the United States a) to take
5 all appropriate action to protect human health and the environment or
6 to prevent, abate, respond to, or minimize an actual or threatened
7 release of Waste Material on, at, or from the Site, or b) to direct
8 or order such action, or seek an order from the Court, to protect
9 human health and the environment or to prevent, abate, respond to, or
10 minimize an actual or threatened release of Waste Material on, at, or
11 from the Site, subject to Section XXI (Covenants Not to Sue by
12 Plaintiff).

13 XVI. REIMBURSEMENT OF RESPONSE COSTS

14 53. Work-Performing Settling Defendants shall reimburse
15 the EPA Hazardous Substance Superfund for all Future Response Costs
16 not inconsistent with the National Contingency Plan, provided,
17 however, that the Work-Performing Settling Defendants shall not be
18 required to reimburse the first \$100,000 of such Future Response
19 Costs. The United States will send Work-Performing Settling
20 Defendants a bill requiring payment that includes a Superfund Costs
21 Organization Enhancement System (SCORES) report, on a periodic basis.
22 Work-Performing Settling Defendants shall make all payments within
23 thirty (30) days of Work-Performing Settling Defendants receipt of
24 each bill requiring payment, except as otherwise provided in Paragraph
25 54. The Work-Performing Settling Defendants shall make all payments
26 required by this Paragraph in the form of a certified or cashier's
27 check or checks made payable to "EPA Hazardous Substance Superfund"

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2 and referencing the EPA Region and Site/Spill ID # 1023, the DOJ case
3 number 90-11-3-397-B, and the name and address of the party making
4 payment. The Work-Performing Settling Defendants shall send the
5 check(s) to Mellon Bank, EPA Region 10, ATTN: Superfund Accounting,
6 P. O. Box 360903M, Pittsburgh, Pennsylvania 15251 and shall send
7 copies of the check(s) to the United States as specified in Section
8 XXVI (Notices and Submissions) and Joe Penwell, U.S. EPA, Region 10,
9 1200 Sixth Avenue, OMP-146, Seattle, Washington 98101.

10 54. Work-Performing Settling Defendants may contest payment of
11 any Future Response Costs under Paragraph 53 if they determine that
12 the United States has made an accounting error or if they allege that
13 a cost item that is included represents costs that are inconsistent
14 with the NCP. Such objection shall be made in writing within thirty
15 (30) days of receipt of the bill and must be sent to the United States
16 (if the United States' accounting is being disputed) pursuant to
17 Section XXVI (Notices and Submissions). Any such objection shall
18 specifically identify the contested Future Response Costs and the
19 basis for objection. In the event of an objection, the Work-
20 Performing Settling Defendants shall within the thirty (30) day period
21 pay all uncontested Future Response Costs to the United States in the
22 manner described in Paragraph 53. Simultaneously, the Work-
23 Performing Settling Defendants shall establish an interest-bearing
24 escrow account in a federally-insured bank duly chartered in the State
25 of Oregon and remit to that escrow account funds equivalent to the
26 amount of the contested Future Response Costs. The Work-Performing
27 Settling Defendants shall send to the United States, as provided in

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2 Section XXVI (Notices and Submissions), a copy of the transmittal
3 letter and check paying the uncontested Future Response Costs, and a
4 copy of the correspondence that establishes and funds the escrow
5 account, including, but not limited to, information containing the
6 identity of the bank and bank account under which the escrow account
7 is established as well as a bank statement showing the initial balance
8 of the escrow account. Simultaneously with establishment of the
9 escrow account, the Work-Performing Settling Defendants shall initiate
10 the Dispute Resolution procedures in Section XIX (Dispute Resolution).
11 If the United States prevails in the dispute, within five (5) days of
12 the resolution of the dispute, the Work-Performing Settling Defendants
13 shall pay the sums due (with accrued interest) to the United States
14 in the manner described in Paragraph 53. If the Work-Performing
15 Settling Defendants prevail concerning any aspect of the contested
16 costs, the Work-Performing Settling Defendants shall pay that portion
17 of the costs (plus associated accrued interest) for which they did not
18 prevail to the United States in the manner described in Paragraph 53;
19 Work-Performing Settling Defendants shall be disbursed any balance of
20 the escrow account. The dispute resolution procedures set forth in
21 this Paragraph in conjunction with the procedures set forth in Section
22 XIX (Dispute Resolution) shall be the exclusive mechanisms for
23 resolving disputes regarding the Work-Performing Settling Defendants'
24 obligation to reimburse the United States for its Future Response
25 Costs.

26 55. In the event that the payments required by Paragraph 53 are
27 not made within 30 days of the Work-Performing Settling Defendants'

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2 receipt of the bill, Work-Performing Settling Defendants shall pay
3 Interest on the unpaid balance. The Interest on Future Response Costs
4 shall begin to accrue on the date of the bill. The Interest shall
5 accrue through the date of the Work Performing Settling Defendant's
6 payment. Payments of Interest made under this Paragraph shall be in
7 addition to such other remedies or sanctions available to Plaintiff
8 by virtue of Work-Performing Settling Defendants' failure to make
9 timely payments under this Section. The Work-Performing Settling
10 Defendants shall make all payments required by this Paragraph in the
11 manner described in Paragraph 53.

12 XVII. INDEMNIFICATION AND INSURANCE

13 56. a. The United States does not assume any liability by
14 entering into this agreement or by virtue of any designation of
15 Settling Defendants as EPA's authorized representatives under Section
16 104(e) of CERCLA. Work-Performing Settling Defendants shall
17 indemnify, save and hold harmless the United States and its officials,
18 agents, employees, contractors, subcontractors, or representatives for
19 or from any and all claims or causes of action arising from, or on
20 account of, negligent or other wrongful acts or omissions of Work-
21 Performing Settling Defendants, their officers, directors, employees,
22 agents, contractors, subcontractors, and any persons acting on their
23 behalf or under their control, in carrying out activities pursuant to
24 this Consent Decree, including, but not limited to, any claims arising
25 from any designation of Work-Performing Settling Defendants as EPA's
26 authorized representatives under Section 104(e) of CERCLA. Further,
27 the Work-Performing Settling Defendants agree to pay the United States

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2 all costs it incurs including, but not limited to, attorneys fees and
3 other expenses of litigation and settlement arising from, or on
4 account of, claims made against the United States based on negligent
5 or other wrongful acts or omissions of Work-Performing Settling
6 Defendants, their officers, directors, employees, agents, contractors,
7 subcontractors, and any persons acting on their behalf or under their
8 control, in carrying out activities pursuant to this Consent Decree.
9 The United States shall not be held out as a party to any contract
10 entered into by or on behalf of Work-Performing Settling Defendants
11 in carrying out activities pursuant to this Consent Decree. Neither
12 the Work-Performing Settling Defendants nor any such contractor shall
13 be considered an agent of the United States.

14 b. The United States shall give Work-Performing Settling
15 Defendants notice of any claim for which the United States plans to
16 seek indemnification pursuant to Paragraph 57.a., and shall consult
17 with Work-Performing Settling Defendants prior to settling such claim.

18 57. Settling Defendants waive all claims against the United
19 States for damages or reimbursement or for set-off of any payments
20 made or to be made to the United States, arising from or on account
21 of any contract, agreement, or arrangement between any one or more of
22 Settling Defendants and any person for performance of Work on or
23 relating to the Site, including, but not limited to, claims on account
24 of construction delays. In addition, Work-Performing Settling
25 Defendants shall indemnify and hold harmless the United States with
26 respect to any and all claims for damages or reimbursement arising
27 from or on account of any contract, agreement, or arrangement between

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2 any one or more of Settling Defendants and any person for performance
3 of Work on or relating to the Site, including, but not limited to,
4 claims on account of construction delays.

5 58. No later than fifteen (15) days before commencing any on-site
6 Work, Work-Performing Settling Defendants shall secure, and shall
7 maintain until the first anniversary of EPA's Certification of
8 Completion of the Remedial Action pursuant to Paragraph 49.b. of
9 Section XIV (Certification of Completion) comprehensive general
10 liability insurance with limits of five million dollars (\$5,000,000),
11 combined single limit, and automobile liability insurance with limits
12 of one million dollars (\$1,000,000), combined single limit, naming the
13 United States as an additional insured. In addition, for the duration
14 of this Consent Decree, Work-Performing Settling Defendants shall
15 satisfy, or shall ensure that their contractors or subcontractors
16 satisfy, all applicable laws and regulations regarding the provision
17 of worker's compensation insurance for all persons performing the Work
18 on behalf of Work-Performing Settling Defendants in furtherance of
19 this Consent Decree. Prior to commencement of the Work under this
20 Consent Decree, Work-Performing Settling Defendants shall provide to
21 EPA certificates of such insurance and a copy of each insurance
22 policy. Work-Performing Settling Defendants shall resubmit such
23 certificates and copies of policies each year on the anniversary of
24 the effective date of this Consent Decree. If Work-Performing
25 Settling Defendants demonstrate by evidence satisfactory to EPA that
26 any contractor or subcontractor maintains insurance equivalent to that
27 described above, or insurance covering the same risks but in a lesser

amount, then, with respect to that contractor or subcontractor, Work-Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Work-Performing Settling Defendants, of any entity controlled by Work-Performing Settling Defendants, or of Work-Performing Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Work-Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that the Work-Performing Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Work-Performing Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director

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2 of the Office of Environmental Cleanup, Region 10, within twenty-four
3 (24) hours of when Work-Performing Settling Defendants first knew that
4 the event might cause a delay. Within five (5) days thereafter, Work-
5 Performing Settling Defendants shall provide in writing to EPA an
6 explanation and description of the reasons for the delay; the
7 anticipated duration of the delay; all actions taken or to be taken
8 to prevent or minimize the delay; a schedule for implementation of any
9 measures to be taken to prevent or mitigate the delay or the effect
10 of the delay; the Work-Performing Settling Defendants' rationale for
11 attributing such delay to a force majeure event if they intend to
12 assert such a claim; and a statement as to whether, in the opinion of
13 the Work-Performing Settling Defendants, such event may cause or
14 contribute to an endangerment to public health, welfare or the
15 environment. The Work-Performing Settling Defendants shall include
16 with any notice all available documentation supporting their claim
17 that the delay was attributable to a force majeure. Failure to comply
18 with the above requirements shall preclude Work-Performing Settling
19 Defendants from asserting any claim of force majeure for that event
20 for the period of time of such failure to comply, and for any
21 additional delay caused by such failure. Work-Performing Settling
22 Defendants shall be deemed to know of any circumstance of which Work-
23 Performing Settling Defendants, any entity controlled by Work-
24 Performing Settling Defendants, or Work-Performing Settling
25 Defendants' contractors knew or should have known.

26 61. If EPA agrees that the delay or anticipated delay is
27 attributable to a force majeure event, the time for performance of the

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2 obligations under this Consent Decree that are affected by the force
3 majeure event will be extended by EPA for such time as is necessary
4 to complete those obligations. An extension of the time for
5 performance of the obligations affected by the force majeure event
6 shall not, of itself, extend the time for performance of any other
7 obligation. If EPA does not agree that the delay or anticipated delay
8 has been or will be caused by a force majeure event, EPA will notify
9 the Work-Performing Settling Defendants in writing of its decision.
10 If EPA agrees that the delay is attributable to a force majeure event,
11 EPA will notify the Work-Performing Settling Defendants in writing of
12 the length of the extension, if any, for performance of the
13 obligations affected by the force majeure event.

14 62. If the Work-Performing Settling Defendants elect to invoke
15 the dispute resolution procedures set forth in Section XIX (Dispute
16 Resolution), they shall do so no later than fifteen (15) days after
17 receipt of EPA's notice. In any such proceeding, Work-Performing
18 Settling Defendants shall have the burden of demonstrating by a
19 preponderance of the evidence that the delay or anticipated delay has
20 been or will be caused by a force majeure event, that the duration of
21 the delay or the extension sought was or will be warranted under the
22 circumstances, that best efforts were exercised to avoid and mitigate
23 the effects of the delay, and that Work-Performing Settling Defendants
24 complied with the requirements of Paragraphs 59 and 60, above. If
25 Work-Performing Settling Defendants carry this burden, the delay at
26 issue shall be deemed not to be a violation by Work-Performing
27 Settling Defendants of the affected obligation of this Consent Decree

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2 identified to EPA and the Court.

3 XIX. DISPUTE RESOLUTION

4 63. Unless otherwise expressly provided for in this Consent
5 Decree, the dispute resolution procedures of this Section shall be the
6 exclusive mechanism to resolve disputes arising under or with respect
7 to this Consent Decree. However, the procedures set forth in this
8 Section shall not apply to actions by the United States to enforce
9 obligations of the Settling Defendants that have not been disputed in
10 accordance with this Section.

11 64. Any dispute which arises under or with respect to this
12 Consent Decree shall in the first instance be the subject of informal
13 negotiations between the Parties to the dispute. The period for
14 informal negotiations shall not exceed twenty (20) days from the time
15 the dispute arises, unless it is modified by written agreement of the
16 parties to the dispute. The dispute shall be considered to have
17 arisen when one Party sends the other Parties a written Notice of
18 Dispute. During the period of informal negotiations, a Party may
19 propose the use of third-party mediation to resolve a dispute.
20 Mediation may be used if all Parties to the dispute agree to its use.
21 However, no Party is required to agree to the use of mediation, and
22 a Party's decision not to use mediation shall not be subject to
23 review.

24 65. a. In the event that the Parties cannot resolve a dispute by
25 informal negotiations under the preceding Paragraph, then the position
26 advanced by EPA shall be considered binding unless, within ten (10)
27 days after the conclusion of the informal negotiation period, Settling

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2 Defendants invoke the formal dispute resolution procedures of this
3 Section by serving on the United States a written Statement of
4 Position on the matter in dispute, including, but not limited to, any
5 factual data, analysis or opinion supporting that position and any
6 supporting documentation relied upon by the Settling Defendants. The
7 Statement of Position shall specify the Settling Defendants' position
8 as to whether formal dispute resolution should proceed under Paragraph
9 66 or Paragraph 67.

10 b. Within ten (10) days after receipt of Settling Defendants'
11 Statement of Position, EPA will serve on Settling Defendants its
12 Statement of Position, including, but not limited to, any factual
13 data, analysis, or opinion supporting that position and all supporting
14 documentation relied upon by EPA. EPA's Statement of Position shall
15 include a statement as to whether formal dispute resolution should
16 proceed under Paragraph 66 or 67. Within seven (7) days after
17 receipt of EPA's Statement of Position, Settling Defendants may submit
18 a Reply.

19 c. If there is disagreement between EPA and the Settling
20 Defendants as to whether dispute resolution should proceed under
21 Paragraph 66 or 67, the parties to the dispute shall follow the
22 procedures set forth in the paragraph determined by EPA to be
23 applicable. However, if the Settling Defendants ultimately appeal to
24 the Court to resolve the dispute, the Court shall determine which
25 paragraph is applicable in accordance with the standards of
26 applicability set forth in Paragraphs 66 and 67.

27 66. Formal dispute resolution for disputes pertaining to the
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2 selection or adequacy of any response action and all other disputes
3 that are accorded review on the administrative record under applicable
4 principles of administrative law shall be conducted pursuant to the
5 procedures set forth in this Paragraph. For purposes of this
6 Paragraph, the adequacy of any response action includes, without
7 limitation: (1) the adequacy or appropriateness of plans, procedures
8 to implement plans, or any other items requiring approval by EPA under
9 this Consent Decree; and (2) the adequacy of the performance of
10 response actions taken pursuant to this Consent Decree. Nothing in
11 this Consent Decree shall be construed to allow any dispute by
12 Settling Defendants regarding the validity of the ROD's provisions.

13 a. An administrative record of the dispute shall be
14 maintained by EPA and shall contain all statements of position,
15 including supporting documentation, submitted pursuant to this
16 Section. Where appropriate, EPA may allow submission of supplemental
17 statements of position by the parties to the dispute.

18 b. The Director of the Office of Environmental Cleanup, EPA
19 Region 10, will issue a final administrative decision resolving the
20 dispute based on the administrative record described in Paragraph
21 66.a. This decision shall be binding upon the Settling Defendants,
22 subject only to the right to seek judicial review pursuant to
23 Paragraph 66.c. and d.

24 c. Any administrative decision made by EPA pursuant to
25 Paragraph 66.b. shall be reviewable by this Court, provided that a
26 motion for judicial review of the decision is filed by the Settling
27 Defendants with the Court and served on all Parties within ten (10)

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2 days of receipt of EPA's decision. The motion shall include a
3 description of the matter in dispute, the efforts made by the parties
4 to resolve it, the relief requested, and the schedule, if any, within
5 which the dispute must be resolved to ensure orderly implementation
6 of this Consent Decree. The United States may file a response to
7 Settling Defendants' motion.

8 d. In proceedings on any dispute governed by this
9 Paragraph, Settling Defendants shall have the burden of demonstrating
10 that the decision of the Office of Environmental Cleanup Director is
11 arbitrary and capricious or otherwise not in accordance with law.
12 Judicial review of EPA's decision shall be on the administrative
13 record compiled pursuant to Paragraph 66.a.

14 67. Formal dispute resolution for disputes that neither pertain
15 to the selection or adequacy of any response action nor are otherwise
16 accorded review on the administrative record under applicable
17 principles of administrative law, shall be governed by this Paragraph.

18 a. Following receipt of Settling Defendants' Statement of
19 Position submitted pursuant to Paragraph 65, the Director of the
20 Office of Environmental Cleanup, EPA Region 10, will issue a final
21 decision resolving the dispute. The Office of Environmental
22 Director's decision shall be binding on the Settling Defendants
23 unless, within ten (10) days of receipt of the decision, the Settling
24 Defendants file with the Court and serve on the parties a motion for
25 judicial review of the decision setting forth the matter in dispute,
26 the efforts made by the parties to resolve it, the relief requested,
27 and the schedule, if any, within which the dispute must be resolved.

1
2 to ensure orderly implementation of the Consent Decree. The United
3 States may file a response to Settling Defendants' motion.

4 b. Notwithstanding Paragraph J of Section I (Background)
5 of this Consent Decree, judicial review of any dispute governed by
6 this Paragraph shall be governed by applicable principles of law.

7 68. The invocation of formal dispute resolution procedures under
8 this Section shall not extend, postpone or affect in any way any
9 obligation of the Settling Defendants under this Consent Decree, not
10 directly in dispute, unless EPA or the Court agrees otherwise.
11 Stipulated penalties with respect to the disputed matter shall
12 continue to accrue but payment shall be stayed pending resolution of
13 the dispute as provided in Paragraph 77. Notwithstanding the stay of
14 payment, stipulated penalties shall accrue from the first day of
15 noncompliance with any applicable provision of this Consent Decree.
16 In the event that the Settling Defendants do not prevail on the
17 disputed issue, stipulated penalties shall be assessed and paid as
18 provided in Section XX (Stipulated Penalties). However, in the event
19 that Responsible Settling Defendant(s), as defined below, prevail(s)
20 on the disputed issue, such Responsible Settling Defendant(s) shall
21 not be assessed a stipulated penalty.

22 XX. STIPULATED PENALTIES

23 69. Settling Defendants shall be liable for stipulated penalties
24 in the amounts set forth in Paragraphs 70 and 71 to the United States
25 for failure to comply with the requirements applicable to such
26 Settling Defendant(s) ("Responsible Settling Defendant(s)") of this
27 Consent Decree specified below, unless excused under Section XVIII

(Force Majeure). "Compliance" by Responsible Settling Defendant(s) shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

70. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	The first through fourteenth day
\$ 2,000	The fifteenth through thirtieth day
\$ 5,000	The thirty-first day and beyond

b.

- I. For failure to timely and satisfactorily submit an original and any revised Remedial Action Work Plan.
- ii. For failure to timely initiate Remedial Action Field Work.
- iii. For failure to satisfactorily conduct Remedial Action in accordance with the Final Remedial Action Work Plan.
- iv. For failure to satisfactorily conduct Operation and Maintenance as required by the Operation and Maintenance Plan approved or developed by EPA.

71. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents not referenced in Paragraph 70.b pursuant to this Consent Decree:

1
2 Penalty Per Violation
3 Per Day

Period of Noncompliance

4 \$500 The first through the fourteenth day.
5 \$1,000 The fifteenth through the thirtieth day.
6 \$2,000 The thirty first through the forty-fifth
7 day.
8 \$3,500 The forty-sixth through ninetieth day.
9

10 72. In the event that EPA assumes performance of a portion or
11 all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not
12 to Sue by Plaintiff), Work-Performing Settling Defendants shall be
13 liable for a stipulated penalty in the amount of two million
14 (\$2,000,000) dollars.

15 73. All penalties shall begin to accrue on the day after the
16 complete performance is due or the day a violation occurs, and shall
17 continue to accrue through the final day of the correction of the
18 noncompliance or completion of the activity. However, stipulated
19 penalties shall not accrue: (1) with respect to a deficient
20 submission under Section XI (EPA Approval of Plans and Other
21 Submissions), during the period, if any, beginning on the 31st day
22 after EPA's receipt of such submission until the date that EPA
23 notifies Responsible Settling Defendant(s) of any deficiency; (2) with
24 respect to a decision by the Director of the Office of Environmental
25 Cleanup, EPA Region 10, under Paragraph 66.b. or 67.a. of Section XIX
26 (Dispute Resolution), during the period, if any, beginning on the 21st
27 day after the date that the reply of the Responsible Settling

1
2 Defendant(s) to EPA's Statement of Position is received until the date
3 that the Director issues a final decision regarding such dispute; or
4 (3) with respect to judicial review by this Court of any dispute under
5 Section XIX (Dispute Resolution), during the period, if any, beginning
6 on the 31st day after the Court's receipt of the final submission
7 regarding the dispute until the date that the Court issues a final
8 decision regarding such dispute. Nothing herein shall prevent the
9 simultaneous accrual of separate penalties for separate violations of
10 this Consent Decree.

11 74. Following EPA's determination that Responsible Settling
12 Defendant(s) have failed to comply with a requirement of this Consent
13 Decree, EPA may give Responsible Settling Defendant(s) written
14 notification of the same and describe the noncompliance. EPA may send
15 the Responsible Settling Defendant(s) a written demand for the payment
16 of the penalties. However, penalties shall accrue as provided in the
17 preceding Paragraph regardless of whether EPA has notified the
18 Responsible Settling Defendant(s) of a violation.

19 75. All penalties accruing under this Section shall be due and
20 payable to the United States within thirty (30) days of the date that
21 the Responsible Settling Defendant(s) receive EPA's demand for payment
22 of the penalties, unless Responsible Settling Defendant(s) invoke the
23 Dispute Resolution procedures under Section XIX (Dispute Resolution).
24 All payments to the United States under this Section shall be paid by
25 certified or cashier's check(s) made payable to "EPA Hazardous
26 Substances Superfund," shall be mailed to Mellon Bank, EPA Region 10,
27 ATTN: Superfund Accounting, P.O. Box 360903M, Pittsburgh, Pennsylvania

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2 15251, shall indicate that the payment is for stipulated penalties,
3 and shall reference the EPA Region 10 and Site/Spill ID #1023, the DOJ
4 Case Number 90-11-3-397-B, and the name and address of the Party
5 making payment. Copies of check(s) paid pursuant to this Section, and
6 any accompanying transmittal letter(s), shall be sent to the United
7 States as provided in Section XXVI (Notices and Submissions), and to
8 Joe Penwell, U.S. EPA, Region 10, 1200 Sixth Avenue, OMP-146, Seattle,
9 Washington 98101

10 76. The payment of penalties shall not alter in any way any
11 obligation of the Responsible Settling Defendant(s) to complete the
12 performance of the Work required under this Consent Decree.

13 77. Penalties shall continue to accrue as provided in Paragraph
14 73 during any dispute resolution period, but need not be paid until
15 the following:

16 a. If the dispute is resolved by agreement or by a decision
17 of EPA that is not appealed to this Court, accrued penalties
18 determined to be owing shall be paid to EPA within fifteen (15) days
19 of the agreement or the receipt of EPA's decision or order;

20 b. If the dispute is appealed to this Court and the United
21 States prevails in whole or in part, Responsible Settling Defendant(s)
22 shall pay all accrued penalties determined by the Court to be owed to
23 EPA within sixty (60) days of receipt of the Court's decision or
24 order, except as provided in Subparagraph c below;

25 c. If the District Court's decision is appealed by any
26 Party, Responsible Settling Defendant(s) shall pay all accrued
27 penalties determined by the District Court to be owing to the United

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2 States into an interest-bearing escrow account within sixty (60) days
3 of receipt of the Court's decision or order. Penalties shall be paid
4 into this account as they continue to accrue, at least every sixty
5 (60) days. Within fifteen (15) days of receipt of the final appellate
6 court decision, the escrow agent shall pay the balance of the account
7 to EPA or to Responsible Settling Defendant(s) to the extent that
8 they prevail.

9 78. a. If Responsible Settling Defendant(s) fail to pay
10 stipulated penalties when due, the United States may institute
11 proceedings to collect the penalties, as well as interest.
12 Responsible Settling Defendant(s) shall pay Interest on the unpaid
13 balance, which shall begin to accrue on the date of demand made
14 pursuant to Paragraph 75.

15 b. Nothing in this Consent Decree shall be construed as
16 prohibiting, altering, or in any way limiting the ability of the
17 United States to seek any other remedies or sanctions available by
18 virtue of Responsible Settling Defendant('s')(s') violation of this
19 Decree or of the statutes and regulations upon which it is based,
20 including, but not limited to, penalties pursuant to Section 122(1)
21 of CERCLA, 42 U.S.C. § 9621(1). Provided, however, that the United
22 States shall not seek civil penalties pursuant to Section 122(1) of
23 CERCLA, 42 U.S.C § 9621(1), for any violation for which a stipulated
24 penalty is provided herein, except in the case of a willful violation
25 of the Consent Decree.

26 79. Notwithstanding any other provision of this Section, the
27 United States may, in its unreviewable discretion, waive any portion

1
2 of stipulated penalties that have accrued pursuant to this Consent
3 Decree.

4 XXI. COVENANTS NOT TO SUE BY PLAINTIFF

5 80. In consideration of the actions that will be performed and
6 the payments that will be made by the Settling Defendants under the
7 terms of the Consent Decree, and except as specifically provided in
8 Paragraphs 81, 82, and 84 of this Section, the United States covenants
9 not to sue or to take administrative action against Settling
10 Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C.
11 §§ 9606 and 9607(a) (including claims for Past Response Costs as
12 defined herein), relating to the Site. Except with respect to future
13 liability, these covenants not to sue shall take effect upon the
14 effective date of this Consent Decree. With respect to future
15 liability, these covenants not to sue shall take effect upon
16 Certification of Completion of Remedial Action by EPA pursuant to
17 Paragraph 49.b of Section XIV (Certification of Completion). These
18 covenants not to sue are conditioned upon the satisfactory performance
19 by Settling Defendants of their obligations under this Consent Decree.
20 These covenants not to sue extend only to the Settling Defendants and
21 do not extend to any other person.

22 81. United States' Pre-certification reservations.
23 Notwithstanding any other provision of this Consent Decree, the United
24 States reserves, and this Consent Decree is without prejudice to, the
25 right to institute proceedings in this action or in a new action, or
26 to issue an administrative order seeking to compel Settling Defendants
27 (1) to perform further response actions relating to the Site or (2)

1
2 to reimburse the United States for additional costs of response if,
3 prior to Certification of Completion of the Remedial Action:

4 (i) conditions at the Site, previously unknown to EPA, are
5 discovered, or

6 (ii) information, previously unknown to EPA, is received, in
7 whole or in part,

8 and these previously unknown conditions or information together with
9 any other relevant information indicates that the Remedial Action is
10 not protective of human health or the environment.

11 82. United States' Post-certification reservations.

12 Notwithstanding any other provision of this Consent Decree, the United
13 States reserves, and this Consent Decree is without prejudice to, the
14 right to institute proceedings in this action or in a new action, or
15 to issue an administrative order seeking to compel Settling Defendants
16 (1) to perform further response actions relating to the Site or (2)
17 to reimburse the United States for additional costs of response if,
18 subsequent to Certification of Completion of the Remedial Action:

19 (i) conditions at the Site, previously unknown to EPA, are
20 discovered, or

21 (ii) information, previously unknown to EPA, is received,
22 in whole or in part,

23 and these previously unknown conditions or this information together
24 with other relevant information indicate that the Remedial Action is
25 not protective of human health or the environment.

26 83. For purposes of Paragraph 81, the information and the
27 conditions known to EPA shall include only that information and those

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2 conditions known to EPA as of the date the ROD was signed and set
3 forth in the Record of Decision for the Site and the administrative
4 record supporting the Record of Decision. For purposes of Paragraph
5 82, the information and the conditions known to EPA shall include only
6 that information and those conditions known to EPA as of the date of
7 Certification of Completion of the Remedial Action and set forth in
8 the Record of Decision, the administrative record supporting the
9 Record of Decision, the post-ROD administrative record, or in any
10 information received by EPA pursuant to the requirements of this
11 Consent Decree prior to Certification of Completion of the Remedial
12 Action.

13 84. General reservations of rights. The covenants not to sue
14 set forth above do not pertain to any matters other than those
15 expressly specified in Paragraph 80. The United States reserves, and
16 this Consent Decree is without prejudice to, all rights against
17 Settling Defendants with respect to all other matters, including but
18 not limited to, the following:

19 (1) claims based on a failure by Settling Defendants to
20 meet a requirement of this Consent Decree;

21 (2) liability arising from the past, present, or future
22 disposal, release, or threat of release of Waste Materials
23 outside of the Site;

24 (3) liability for future disposal of Waste Material at the
25 Site, other than as provided in the ROD, the Work, or otherwise
26 ordered by EPA;

27 (4) liability for damages for injury to, destruction of,

1
2 or loss of natural resources, and for the costs of any natural
3 resource damage assessments;

4 (5) criminal liability;

5 (6) liability for violations of federal or state law which
6 occur during or after implementation of the Remedial Action;

7 (7) liability, prior to Certification of Completion of
8 the Remedial Action, for additional response actions that
9 EPA determines are necessary to achieve Performance
10 Standards, but that cannot be required pursuant to Paragraph
11 14 (Modification of the SOW or Related Work Plans);

12 (8) liability for releases of hazardous substances,
13 pollutants, or contamination from or related to the Rhone-Poulenc
14 Ag Company Facility, located at 6200 NW St. Helens Road in
15 Portland, Oregon, other than contamination addressed by the ROD;
16 and

17 (9) liability for any costs that the United States incurs
18 in connection with the Site after lodging of this Consent Decree
19 but that are not within the definition of Future Response Costs.

20 85. Work Takeover In the event EPA determines that Owner
21 Settling Defendants or Work-Performing Settling Defendants have ceased
22 implementation of any portion of the Work, are seriously or repeatedly
23 deficient or late in their performance of the Work, or are
24 implementing the Work in a manner which may cause an endangerment to
25 human health or the environment, EPA may assume the performance of all
26 or any portions of the Work as EPA determines necessary. Owner
27 Settling Defendants or Work-Performing Settling Defendants responsible

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2 for such Work may invoke the procedures set forth in Section XIX
3 (Dispute Resolution), Paragraph 66, to dispute EPA's determination
4 that takeover of the Work is warranted under this Paragraph. Costs
5 incurred by the United States in performing the Work pursuant to this
6 Paragraph shall be considered Future Response Costs that Owner
7 Settling Defendants or Work-Performing Settling Defendants responsible
8 for such Work shall pay pursuant to Section XVI (Reimbursement of
9 Response Costs).

10 86. Notwithstanding any other provision of this Consent Decree,
11 the United States retains all authority and reserves all rights to
12 take any and all response actions authorized by law.

13 XXII. COVENANTS BY SETTLING DEFENDANTS

14 87. Covenant Not to Sue. Subject to the reservations in
15 Paragraph 88, Settling Defendants hereby covenant not to sue and agree
16 not to assert any claims or causes of action against the United States
17 with respect to the Site, Past and Future Response Costs as defined
18 herein, or this Consent Decree, including, but not limited to:

19 a. any direct or indirect claim for reimbursement from the
20 Hazardous Substance Superfund (established pursuant to the Internal
21 Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2),
22 107, 111, 112, and 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, and
23 9613, or any other provision of law;

24 b. any claims against the United States, including any
25 department, agency or instrumentality of the United States under
26 CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the
27 Site, or

1
2 c. any claims arising out of response activities at the
3 Site, including claims based on EPA's selection of response actions,
4 oversight of response activities or approval of plans for such
5 activities.

6 88. The Settling Defendants reserve, and this Consent Decree is
7 without prejudice to, claims against the United States, subject to the
8 provisions of Chapter 171 of Title 28 of the United States Code, for
9 money damages for injury or loss of property or personal injury or
10 death caused by the negligent or wrongful act or omission of any
11 employee of the United States while acting within the scope of his
12 office or employment under circumstances where the United States, if
13 a private person, would be liable to the claimant in accordance with
14 the law of the place where the act or omission occurred. However, any
15 such claim shall not include a claim for any damages caused, in whole
16 or in part, by the act or omission of any person, including any
17 contractor, who is not a federal employee as that term is defined in
18 28 U.S.C. § 2671; nor shall any such claim include a claim based on
19 EPA's selection of response actions, or the oversight or approval of
20 the Settling Defendants' plans or activities. The foregoing applies
21 only to claims which are brought pursuant to any statute other than
22 CERCLA and for which the waiver of sovereign immunity is found in a
23 statute other than CERCLA;

24 89. Nothing in this Consent Decree shall be deemed to constitute
25 preauthorization of a claim within the meaning of Section 111 of
26 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

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2 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

3 90. Nothing in this Consent Decree shall be construed to create
4 any rights in, or grant any cause of action to, any person not a Party
5 to this Consent Decree. The preceding sentence shall not be construed
6 to waive or nullify any rights that any person not a signatory to this
7 decree may have under applicable law. Each of the Parties expressly
8 reserves any and all rights (including, but not limited to, any right
9 to contribution), defenses, claims, demands, and causes of action
10 which each Party may have with respect to any matter, transaction, or
11 occurrence relating in any way to the Site against any person not a
12 Party hereto.

13 91. The Parties agree, and by entering this Consent Decree this
14 Court finds, that the Settling Defendants are entitled, as of the
15 effective date of this Consent Decree, to protection from contribution
16 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C.
17 § 9613(f)(2), for matters addressed in this Consent Decree, except as
18 to any actions or claims amongst and between any Settling Defendants
19 that are currently pending in the United States District Court for the
20 District of Oregon case entitled Gould Electronic Inc. v. NL
21 Industries, Inc., et al., Case No. CV91-1091-RE. For the purposes of
22 this Consent Decree, and as used in this Paragraph, "matters addressed
23 in this Consent Decree" shall mean: (1) all response actions taken and
24 to be taken by any party at the Site and (2) all response costs
25 incurred and to be incurred by any party in connection with the Site.
26 "Matters addressed in this Consent Decree" shall not include those
27 response costs or response actions as to which the United States has

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2 reserved its rights under this Consent Decree (except for claims for
3 failure to comply with this Consent Decree), in the event that the
4 United States asserts rights against Settling Defendants coming within
5 the scope of such reservation.

6 92. The Settling Defendants agree that with respect to any suit
7 or claim for contribution brought by them for matters related to this
8 Consent Decree they will notify the United States in writing no later
9 than sixty (60) days prior to the initiation of such suit or claim.

10 93. The Settling Defendants also agree that with respect to any
11 suit or claim for contribution brought against them for matters
12 related to this Consent Decree they will notify in writing the United
13 States within ten (10) days of service of the complaint on them. In
14 addition, Settling Defendants shall notify the United States within
15 ten (10) days of service or receipt of any Motion for Summary Judgment
16 and within ten (10) days of receipt of any order from a court setting
17 a case for trial.

18 94. In any subsequent administrative or judicial proceeding
19 initiated by the United States for injunctive relief, recovery of
20 response costs, or other appropriate relief relating to the Site,
21 Settling Defendants shall not assert, and may not maintain, any
22 defense or claim based upon the principles of waiver, res judicata,
23 collateral estoppel, issue preclusion, claim-splitting, or other
24 defenses based upon any contention that the claims raised by the
25 United States in the subsequent proceeding were or should have been
26 brought in the instant case; provided, however, that nothing in this
27 Paragraph affects the enforceability of the covenants not to sue set

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2 forth in Section XXI (Covenants Not to Sue by Plaintiff).

3 XXIV. ACCESS TO INFORMATION

4 95. Settling Defendants shall provide to EPA, upon request,
5 copies of all documents and information within their possession or
6 control or that of their contractors or agents relating to activities
7 at the Site or to the implementation of this Consent Decree,
8 including, but not limited to, sampling, analysis, chain of custody
9 records, manifests, trucking logs, receipts, reports, sample traffic
10 routing, correspondence, or other documents or information related to
11 the Work. Settling Defendants shall also make available to EPA, for
12 purposes of investigation, information gathering, or testimony, their
13 employees, agents, or representatives with knowledge of relevant facts
14 concerning the performance of the Work.

15 96. a. Settling Defendants may assert business confidentiality
16 claims covering part or all of the documents or information submitted
17 to Plaintiff under this Consent Decree to the extent permitted by and
18 in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
19 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
20 determined to be confidential by EPA will be afforded the protection
21 specified in 40 C.F.R. Part 2, Subpart B. If no claim of
22 confidentiality accompanies documents or information when they are
23 submitted to EPA, or if EPA has notified Settling Defendants that the
24 documents or information are not confidential under the standards of
25 Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), the public may
26 be given access to such documents or information without further
27 notice to Settling Defendants.

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2 b. The Settling Defendants may assert that certain documents,
3 records and other information are privileged under the attorney-client
4 privilege or any other privilege recognized by federal law. If the
5 Settling Defendants assert such a privilege in lieu of providing
6 documents, they shall provide the Plaintiff with the following: (1)
7 the title of the document, record, or information; (2) the date of the
8 document, record, or information; (3) the name and title of the author
9 of the document, record, or information; (4) the name and title of
10 each addressee and recipient; (5) a description of the contents of the
11 document, record, or information; and (6) the privilege asserted by
12 Settling Defendants. However, no documents, reports or other
13 information created or generated pursuant to the requirements of the
14 Consent Decree shall be withheld on the grounds that they are
15 privileged.

16 97. No claim of confidentiality shall be made with respect to
17 any data, including, but not limited to, all sampling, analytical,
18 monitoring, hydrogeologic, scientific, chemical, or engineering data,
19 or any other documents or information evidencing conditions at or
20 around the Site.

21 XXV. RETENTION OF RECORDS

22 98. Until ten (10) years after the Settling Defendants' receipt
23 of EPA's notification pursuant to Paragraph 50.b of Section XIV
24 (Certification of Completion of the Work), each Settling Defendant
25 shall preserve and retain all records and documents now in its
26 possession or control or which come into its possession or control
27 that relate in any manner to the performance of the Work or liability

1
2 of any person for response actions conducted and to be conducted at
3 the Site, regardless of any corporate retention policy to the
4 contrary. Until ten (10) years after the Settling Defendants' receipt
5 of EPA's notification pursuant to Paragraph 50.b of Section XIV
6 (Certification of Completion), Settling Defendants shall also instruct
7 their contractors and agents to preserve all documents, records, and
8 information of whatever kind, nature or description relating to the
9 performance of the Work.

10 99. At the conclusion of this document retention period,
11 Settling Defendants shall notify the United States at least ninety
12 (90) days prior to the destruction of any such records or documents,
13 and, upon request by the United States, Settling Defendants shall
14 deliver any such records or documents to EPA. The Settling Defendants
15 may assert that certain documents, records and other information are
16 privileged under the attorney-client privilege or any other privilege
17 recognized by federal law. If the Settling Defendants assert such a
18 privilege, they shall provide the Plaintiff with the following: (1)
19 the title of the document, record, or information; (2) the date of the
20 document, record, or information; (3) the name and title of the author
21 of the document, record, or information; (4) the name and title of
22 each addressee and recipient; (5) a description of the subject of the
23 document, record, or information; and (6) the privilege asserted by
24 Settling Defendants. However, no documents, reports or other
25 information created or generated pursuant to the requirements of the
26 Consent Decree shall be withheld on the grounds that they are
27 privileged.

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2 100. Each Settling Defendant hereby certifies individually that,
3 to the best of its knowledge and belief, after thorough inquiry, it
4 has not altered, mutilated, discarded, destroyed or otherwise disposed
5 of any records, documents or other information relating to its
6 potential liability regarding the Site since notification of potential
7 liability by the United States or the filing of suit against it
8 regarding the Site and that it has fully complied with any and all EPA
9 requests for information pursuant to Section 104(e) and 122(e) of
10 CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42
11 U.S.C. 6927.

12 XXVI. NOTICES AND SUBMISSIONS

13 101. Whenever, under the terms of this Consent Decree, written
14 notice is required to be given or a report or other document is
15 required to be sent by one Party to another, it shall be directed to
16 the individuals at the addresses specified below, unless those
17 individuals or their successors give notice of a change to the other
18 Parties in writing. All notices and submissions shall be considered
19 effective upon receipt, unless otherwise provided. Written notice as
20 specified herein shall constitute complete satisfaction of any written
21 notice requirement of the Consent Decree with respect to the United
22 States, EPA, and the Settling Defendants, respectively.

23 As to the United States:

24 Chief, Environmental Enforcement Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 P.O. Box 7611
28 Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-397B

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2 As to the United States:

3 Chief, Environmental Enforcement Section
4 Environment and Natural Resources Division
5 U.S. Department of Justice
6 P.O. Box 7611
7 Ben Franklin Station
8 Washington, D.C. 20044
9 Re: DJ # 90-11-3-397B

10 and

11 Director, Office of Environmental Cleanup
12 United States Environmental Protection Agency
13 Region 10
14 ECL-111
15 1200 Sixth Avenue
16 Seattle, Washington 98101

17 As to EPA:

18 Chip Humphrey
19 EPA Project Coordinator
20 United States Environmental Protection Agency
21 Region 10
22 Oregon Operations Office
23 811 S.W. 6th Avenue, 3rd Floor
24 Portland, Oregon 97204

25 As to the Work-Performing Settling Defendants:

26 Work-Performing Settling Defendants' Project Coordinator
27 Jim Cronmiller
28 Gould Electronics, Inc.
34929 Curtis Boulevard
Eastlake, Ohio 44095-4001

29 As to Owner Settling Defendants:

30 Kenneth M. McCaw, Jr.	Bruce Sheppard
31 ESCO Corp.	Burlington Northern and Santa Fe Railway Co.
32 2141 NW 25th Avenue	2454 Occidental Way Ave. S., Suite 1A
33 Portland, Oregon 97210	Seattle, WA 98134-1451

34 Tom Zelenka, Manager
35 Legislative/Enforcement and Public Affairs
36 Schnitzer Investment Corp.
37 3200 NW Yeon Avenue
38 P.O. Box 10047
39 Portland, Oregon 97210

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2 George S. Goodridge
3 Sr. Environmental Attorney
4 Rhone-Poulenc, Inc.
5 2 T.W. Alexander Drive
6 Research Triangle Park, NC 27709-2014

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9 XXVII. EFFECTIVE DATE

10 102. The effective date of this Consent Decree shall be the date
11 upon which this Consent Decree is entered by the Court, except as
12 otherwise provided herein.

13 XXVIII. RETENTION OF JURISDICTION

14 103. This Court retains jurisdiction over both the subject
15 matter of this Consent Decree and the Settling Defendants for the
16 duration of the performance of the terms and provisions of this
17 Consent Decree for the purpose of enabling any of the Parties to apply
18 to the Court at any time for such further order, direction, and relief
19 as may be necessary or appropriate for the construction or
20 modification of this Consent, Decree, or to effectuate or enforce
21 compliance with its terms, or to resolve disputes in accordance with
22 Section XIX (Dispute Resolution) hereof.

23 XXIX. APPENDICES

24 104. The following appendices are attached to and incorporated
25 into this Consent Decree:

26 "Appendix A" is the ROD.

27 "Appendix B" is the SOW.

28 "Appendix C" is the description and/or map of the Site.

"Appendix D" is a draft Environmental Protection Easement and
Restrictive Covenant.

1
2 "Appendix E" is the Environmental Protection Easement and
3 Restrictive Covenant for Schnitzer Investment Corp.

4 XXX. COMMUNITY RELATIONS

5 105. Work-Performing Settling Defendants shall propose to EPA
6 their participation in the community relations plan to be developed
7 by EPA. EPA will determine the appropriate role for the Work-
8 Performing Settling Defendants under the Plan. Settling Defendants
9 shall also cooperate with EPA in providing information regarding the
10 Work to the public. As requested by EPA, Work-Performing Settling
11 Defendants shall participate in the preparation of such information
12 for dissemination to the public and in public meetings which may be
13 held or sponsored by EPA to explain activities at or relating to the
14 Site.

15 XXXI. MODIFICATION

16 106. Schedules specified in this Consent Decree for completion
17 of the Work may be modified by agreement of EPA and the Settling
18 Defendants responsible for such Work. All such modifications shall
19 be made in writing.

20 107. Except as provided in Paragraph 14 ("Modification of the
21 SOW or related Work Plans"), no material modifications shall be made
22 to the SOW without written notification to and written approval of the
23 United States, Work-Performing Settling Defendants, and the Court.
24 Prior to providing its approval to any modification, the United States
25 will provide the State with a reasonable opportunity to review and
26 comment on the proposed modification. Modifications to the SOW that
27 do not materially alter that document may be made by written agreement

1
2 between EPA and the Work-Performing Settling Defendants.

3 108. Nothing in this Decree shall be deemed to alter the Court's
4 power to enforce, supervise or approve modifications to this Consent
5 Decree.

6 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

7 109. This Consent Decree shall be lodged with the Court for a
8 period of not less than thirty (30) days for public notice and comment
9 in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
10 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the
11 right to withdraw or withhold its consent if the comments regarding
12 the Consent Decree disclose facts or considerations which indicate
13 that the Consent Decree is inappropriate, improper, or inadequate.
14 Settling Defendants consent to the entry of this Consent Decree
15 without further notice.

16 110. If for any reason the Court should decline to approve this
17 Consent Decree in the form presented, this agreement is voidable at
18 the sole discretion of any Party and the terms of the agreement may
19 not be used as evidence in any litigation between the Parties.

20 XXXIII. SIGNATORIES/SERVICE

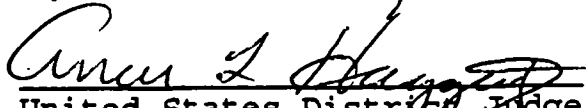
21 111. Each undersigned representative of a Settling Defendant to
22 this Consent Decree and the Assistant Attorney General for Environment
23 and Natural Resources of the Department of Justice certifies that he
24 or she is fully authorized to enter into the terms and conditions of
25 this Consent Decree and to execute and legally bind such Party to this
26 document.

27 112. Each Settling Defendant hereby agrees not to oppose entry
28

1
2 of this Consent Decree by this Court or to challenge any provision of
3 this Consent Decree unless the United States has notified the Settling
4 Defendants in writing that it no longer supports entry of the Consent
5 Decree.

6 113. Each Settling Defendant shall identify, on the attached
7 signature page, the name, address and telephone number of an agent who
8 is authorized to accept service of process by mail on behalf of that
9 Party with respect to all matters arising under or relating to this
10 Consent Decree. Settling Defendants hereby agree to accept service
11 in that manner and to waive the formal service requirements set forth
12 in Rule 4 of the Federal Rules of Civil Procedure and any applicable
13 local rules of this Court, including, but not limited to, service of
14 a summons.

15 SO ORDERED THIS 14 DAY OF May, 1998.

16 
17 United States District Judge
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2 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
3 matter of United States v. NL Industries, Inc., et al, relating
4 to the Gould Superfund Site.

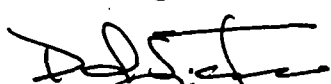
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6 FOR THE UNITED STATES OF AMERICA

7
8 Date:

3/2/98



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



Daniel S. Jacobs
Trial Attorney
Environmental Enforcement Section
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Neil Evans
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District of Oregon
U.S. Department of Justice
888 SW Fifth Avenue
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Chuck Clarke
Regional Administrator, Region 10
U.S. Environmental Protection
Agency
1200 Sixth Avenue
Seattle, Washington 9801



Ted Yackulic
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-1218

1
2 THE UNDERSIGNED PARTY enters into this Consent Decree in the
3 matter of United States v. NL Industries, Inc., et al., relating
4 to the Gould Superfund Site.
5

6 FOR NL Industries, Inc.

7
8 Date: 11/25/97

David B. Garten
Name -- David B. Garten
Title -- Vice President & Secretary
Address -- 16825 Northchase Dr.
Suite 1200
Houston, TX 77060

11
12 Agent Authorized to Accept Service on Behalf of Above-signed
13 Party:

14 Name: _____
15 Title: _____
16 Address: _____
17 Tel. Number: _____
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1
2 THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. NL
3 Industries, Inc. et al., relating to the Gould Superfund Site
4

5
6 FOR Gould Electronics Inc.
7

8 Date: November 5, 1997

9 Michael C. Veysey
Name-- Michael C. Veysey

10 Title-- Sr. Vice President, General Counsel & Sec.

11 Address-- 34929 Curtis Blvd., Eastlake, OH 44095

12 Agent authorized to Accept Service on Behalf of Above-signed Party:

13 Name: Michael C. Veysey

14 Title: Sr. Vice President, General Counsel & Secretary

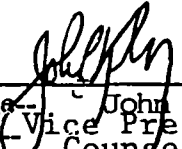
15 Address: 34929 Curtis Boulevard, Eastlake, Ohio 44095

16 Tel. Number: (440) 953-5170
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1
2 THE UNDERSIGNED PARTY enters into this Consent Decree in this matter of United States v.
3 NL Industries, Inc, et al, relating to the Gould Superfund Site:
4

5 FOR Johnson Controls, Inc.

6
7 Date: November 10, 1997

8 
9 Name: John P. Kennedy
10 Title: Vice President, Secretary & General
11 Address: Counsel
12 5757 N. Green Bay Avenue
13 P.O. Box 591 (53201-0591)
14 Milwaukee, WI 53209

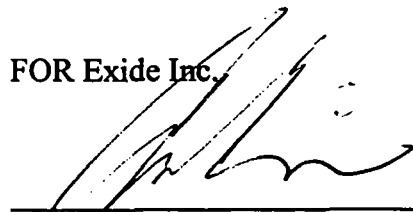
15 Agent Authorized to Accept Service on Behalf of Above-Signed Party:

16
17 Name: Dennis P. Reis
18 Title: Quarles & Brady
19 Address: 411 E. Wisconsin Avenue; Milwaukee, WI 53202
20 Tel. Number: (414) 277-5000
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2
3 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
4 Industries, Inc., et al, relating to the Gould Superfund Site.
5

6
7 FOR Exide Inc.

8 Date: 10/30/97

9 
10 Ari D. Levine
11 Assistant General Counsel
12 Exide Inc.
13 645 Penn Street
14 Redding, Pennsylvania 19612-4205

15 Agent Authorized to Accept Service on Behalf of Above-signed Party:

16 Name: Ari D. Levine
17 Title: Assistant General Counsel, Exide Corporation
18 Address: 645 Penn Street, Redding, PA 19601
19 Tel. Number: 610 - 378 - 0852
20 610 - 371 - 0463 (FAX)

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5 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
6 Industries, Inc., et al, relating to the Gould Superfund Site.
7

8 FOR Lucent Technologies, Inc.
9

10 Date: 29 October 1997

Judy F. Dixon-Williams
11 Name-- Judy F. Dixon-Williams
12 Title-- Technical Manager
13 Address-- Lucent Technologies
975 Clark Street
Morrisstown, NJ 07962

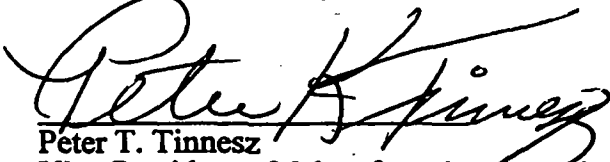

14 Agent Authorized to Accept Service on Behalf of Above-signed Party:

15 Name: Alan Schlesinger
16 Title: Environmental General Attorney
17 Address: 475 South St., Morristown, NJ 07962-1976
18 Tel. Number: (973) 606-4099
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6 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
7 Industries, inc., et al, relating to the Gould Superfund Site.
8

9
10 FOR Rhone-Poulenc, Inc.

11 Date: 11/3/97

12 
13 Peter T. Tinnesz
14 Vice-President of Manufacturing Operations
15 Rhone-Poulenc, Inc.
16 2 T.W. Alexander Drive
17 Research Triangle Park, NC 27709-2014
18 Phone: 919-549-2833
19 

20 Agent Authorized to Accept Service on Behalf of Above-signed Party:

21
22 Name: James E. Benedict
23 Title: Attorney for Rhone-Poulenc Inc.
24 Address: 1001 SW 5th Ave., Suite 2000, Portland, OR 97204
25 Tel. Number: (503) 224-3092
26
27
28

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8 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
9 Industries, Inc., et al, relating to the Gould Superfund Site.
10

11 FOR the Burlington Northern and Santa Fe Railway Co.
12

13 Date: 10/30/97 M. W. Franke
14 Name-- M. W. Franke
15 Title-- VP & Chief Engineer
16 Address-- 2600 Lou Marck Dr. Ft. Worth, TX 76131
17

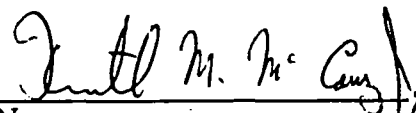
18 Agent Authorized to Accept Service on Behalf of Above-signed Party:
19

20 Name: _____
21 Title: _____
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10 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
11 Industries, Inc., et al, relating to the Gould Superfund Site.

12
13 FOR ESCO Corporation

14
15 Date: 10/29/97



16 Name-- Kenneth M. McCaw, Jr.
17 Title-- Vice President, General Counsel
18 Address-- 2141 N. W. 25th Avenue
Portland, Oregon 97210-2578

19 Agent Authorized to Accept Service on Behalf of Above-signed Party:

20 Name: Kenneth M. McCaw, Jr.
21 Title: Vice President, General Counsel
22 Address: 2141 N. W. 25th Avenue, Portland, Oregon 97210-2578
23 Tel. Number: (503) 778-6605

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9
10 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NL
11 Industries, Inc., et al, relating to the Gould Superfund Site.
12

13
14 FOR Schnitzer Investment Corp.

15 Date: October 30, 1997

16 A. Pardini
17 Name-- ANTON U. PARDINI
18 Title-- GENERAL COUNSEL
19 Address-- 3200 NW YEON AVENUE
20 PORTLAND, OR 97210

21 Agent Authorized to Accept Service on Behalf of Above-signed Party:

22 Name: ANTON U. PARDINI
23 Title: GENERAL COUNSEL
24 Address: 3200 NW YEON AVENUE, PORTLAND, OR 97210
25 Tel. Number: 503-323-2007
26
27
28

APPENDIX A GOULD REMEDIAL ACTION CONSENT DECREE

**AMENDED RECORD OF DECISION
DECISION SUMMARY, AND
RESPONSIVENESS SUMMARY**

FOR

**GOULD SUPERFUND SITE
SOILS OPERABLE UNIT
PORTLAND, OREGON**

MAY 1997

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101**

GOULD SUPERFUND SITE
SOILS OPERABLE UNIT
AMENDED RECORD OF DECISION

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Figure 2	Lead Impacted Areas and Locations of Stockpiles and Blocks
Figure 3	East Doane Lake Wetland Areas
Figure 4	Conceptual Liner and Cap Detail
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Table 1	Comparison of Site Quantities
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Appendix A:	Responsiveness Summary
Appendix B:	Letter of State Concurrence
Appendix C:	Administrative Record Index
Appendix D:	Summary of Design Requirements

Declaration for the
Gould Superfund Site
Soils Operable Unit
Amended Record of Decision

Site

Gould Superfund Site, Soils Operable Unit
Portland, Multnomah County, Oregon

Statement of Basis and Purpose

This decision document presents the selected amended remedial action for the Soils Operable Unit at the Gould Superfund Site (Site). This Record of Decision (ROD) Amendment has been developed in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. Section 9601 et seq., and to the extent practicable, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. The decision to amend the ROD is based on the administrative record for the Gould Site, which was updated April 25, 1997 to include additional information generated since the issuance of the ROD in 1988. The documents added to the administrative record since March 1988 are listed in Appendix C.

The State of Oregon concurs with the ROD Amendment.

Assessment of the Site

Actual or threatened releases of hazardous substances at the Gould Site, if not addressed by implementing the selected remedy documented in the ROD, as amended in this ROD Amendment, may present an imminent and substantial threat to human health, welfare, or the environment.

Description of the Amendment to the Remedy

This decision documents changes to several components of the selected remedial action for the Gould Site Soils Operable Unit. The ROD for this operable unit, signed on March 31, 1988, required treatment of contaminated battery casings to remove and recycle lead; and treatment of soil, sediment and matte to reduce the mobility of lead. This ROD Amendment allows treated and untreated contaminated material to be consolidated and contained in an on-site containment facility (OCF) on the Gould property.

The major components of the selected remedy include:

- * Perform design studies to evaluate Site constraints and design parameters for, at least, consolidation and settlement, lateral and vertical support of the OCF, dewatering sediments, and the hydrogeologic impact of filling East Doane Lake remnant and the open excavation in the Lake Area (previously referred to as the Phase III Area) portion of the Rhone-Poulenc property;
- * Construction of an OCF, which has a leachate collection system and allows for implementation of future Rhone-Poulenc cleanup actions, on the Gould property;
- * Excavation and dewatering of East Doane Lake sediments contaminated above specified cleanup levels;
- * Excavation of the remaining battery casings on the Gould property;
- * Treatment (stabilization or fixation) of the lead fines stockpile (S-15), the screened Gould excavation stockpile (S-22); and other lead contaminated material identified as principal threat waste;
- * Consolidating contaminated material, including sediments, treated and untreated stockpiled materials, casings, soil and debris in the lined and capped OCF;
- * Filling the East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property;
- * Institutional controls, such as deed restrictions or environmental protection easements, which provide access to EPA for the purpose of evaluating the effectiveness of the remedial action, and which limit future use of properties within the Site to (1) industrial operations or other uses compatible with the protective level of cleanup achieved after implementation of the selected remedial action, (2) uses which do not damage the OCF cap and liner system or cause releases of buried materials;
- * Performing groundwater monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and
- * Long-term operation and maintenance requirements and reviews conducted no less often than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment.

The selected remedy will also allow off-site disposal of contaminated materials from the Gould site at regulated Subtitle

D or Subtitle C disposal facilities. Off-site disposal may be necessary because of the uncertainty associated with final site quantities and design constraints. The selected remedy defers a cleanup decision on subsurface waste materials located on the Rhone-Poulenc and ESCO properties.

Declaration

Although this ROD Amendment changes several components of the remedy selected in the ROD, the remedy as amended continues to be protective of human health and the environment. The remedy as amended complies with Federal and State requirements that are legally applicable or relevant and appropriate to the remedial action and is cost effective. The remedy as amended continues to utilize permanent solutions to the extent practicable for this site. Significant quantities of hazardous substances have already been treated at this Site through partial implementation of the ROD. Treatment of the highly contaminated materials and treatment of materials classified as hazardous waste prior to their off-site disposal will be required; thus this remedy satisfies the statutory preference for treatment as a principal element.

Because this remedy will result in hazardous substances remaining on-site above health based levels, a review will be conducted within five (5) years after commencement of remedial action to ensure that the remedy continues to provide adequate protection of human health and the environment.

Chuck Clarke
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Decision Summary

for the Gould Site Soils Operable Unit Amended Record of Decision

INTRODUCTION

Site Name, Location and Description

The Gould Superfund Site (Site) is located in northwest Portland, Oregon near N.W. 61st Avenue in the Doane Lake industrial area between N.W. St. Helens Road and N.W. Front Avenue. It includes property owned by Gould Electronics (approximately 9.2 acres) and portions of property owned by Rhone-Poulenc AG Company (Rhone-Poulenc or RPAC), Schnitzer Investment Corporation, ESCO Corporation, and Burlington Northern Railroad Company.

The Site is also adjacent to property owned by RPAC which was formerly used for the manufacture, formulation, and distribution of pesticide products. RPAC is conducting a Remedial Investigation and Feasibility Study of contamination associated with their property under a Consent Order with the Oregon Department of Environmental Quality (DEQ).

Lead and Support Agencies

The U.S. Environmental Protection Agency (EPA) is the lead agency with the Oregon DEQ the support agency for the Gould Superfund Site.

Statutory Citation for a Record of Decision (ROD) Amendment

Section 117(c) of CERCLA, 42 U.S.C. S9617(c), provides for addressing and documenting changes to the selected remedy after issuance of a ROD. This ROD Amendment documents the changes to the remedy set forth in the ROD. Since fundamental changes are being made to the remedy selected in the ROD, public participation and documentation procedures specified in the NCP, Section 300.435(c)(2)(ii) have been followed.

Date of ROD Signature

The ROD for the Gould Site Soils Operable Unit was signed March 31, 1988.

Need for the ROD Amendment

The remedial action selected in the ROD has been partially completed. The need for this ROD Amendment arose during remedial action as a result of technical concerns. EPA has since determined that the remedy selected in the ROD is no longer

appropriate for conducting the cleanup based on operating experience and conditions at the Site.

Administrative Record

This ROD Amendment will become part of the administrative record for the Gould Site, as required by Section 300.823(a)(2) of the NCP, and will be available for public review at the information repositories listed below:

US EPA
Hazardous Waste Records Center, 7th Floor
1200 Sixth Avenue
Seattle, Washington 98101

Multnomah County Library
Central Library
801 SW Tenth Ave
Portland, Oregon 97204

SITE HISTORY

The Gould Site was listed on the National Priorities List (Superfund) in 1983 because of documented lead contamination. A secondary lead smelting facility was constructed on the current Gould property and began operations in 1949 under the ownership of Morris P. Kirk and Sons. Facility operations consisted of lead-acid battery recycling, lead smelting and refining, zinc alloying and casting, cable sweating, and lead oxide production. Discarded battery casings and other waste materials from the operations were disposed on the Gould property and adjacent properties. NL Industries purchased the property in 1971 and sold it to Gould in 1979. The facility was closed in 1981 and by the summer of 1982 most of the structures, facilities, and equipment had been removed.

The location of the Gould property and adjacent properties is shown on the attached Figure 1. A detailed description of the Site, including pre-1988 history, past waste disposal activities, Site characteristics, and enforcement history, is included in the 1988 ROD and administrative record.

Remedy Selected in the ROD

EPA signed a ROD in March, 1988 for the Soils Operable Unit of the Gould site. The selected remedy included:

- * Excavation of all of the battery casing fragments and matte from the Gould property and adjacent properties where casings have been identified;

- * A phased design program to determine the amount of material that can be recycled and to minimize the amount of material that must be RCRA landfilled;
- * Separation of the battery casing components;
- * Recycling of those components (or portions of components) that can be recycled, off-site disposal for non-recyclable components that fail the EP toxicity test, and on-site disposal of non-hazardous, non-recyclable components;
- * Excavation, fixation/stabilization and on-site disposal of the remaining soil, sediment, and matte;
- * Soil capping and revegetation;
- * Isolation of surface water runoff to East Doane Lake by site regrading; and
- * A monitoring program to determine changes in groundwater contamination over time and to ensure that remediation does not adversely impact air quality.

The selected alternative also included additional study of surface and groundwater in the area to help determine whether action needs to be taken to deal with the contamination beneath the Site.

Post ROD Site History

On February 29, 1988, EPA sent Special Notice letters to Gould and NL to negotiate remedial design/remedial action. On June 15, 1989, a Consent Decree to implement was entered into whereby NL agreed to perform predesign studies which evaluated the remedy selected in the ROD. The predesign studies, which included bench scale, pilot scale, and field demonstration testing, were completed in 1990. The studies evaluated several aspects of the cleanup remedy, including the ability of a proposed process to separate, clean and recycle the battery casing components. Following the review of the Predesign Report (January, 1991) EPA determined that the results met the criteria in the Record of Decision and the Consent Decree.

NL Industries agreed to complete the detailed design plans and specifications under a Consent Order with EPA. EPA approved the remedial design on September 30, 1991.

Special Notice Letters were sent on July 23, 1991, to 21 companies requesting that they provide good faith offers to undertake the cleanup of the site. EPA entered into a De Minimis settlement with six of the companies who were smaller

contributors to pollution at the Site. The U.S. District Court for the District of Oregon approved entry of the De Minimis settlement in February, 1993. Negotiations between the other companies and EPA did not result in a settlement.

EPA issued a Unilateral Administrative Order to seven Gould Site potentially responsible parties (Gould Site PRPs) on January 22, 1992, which required them to implement the selected remedial action at the Gould Superfund Site. The seven companies named include past and present owners, past operators of the facility, and major contributors of waste sent to the site. The Gould Site PRPs have performed the directed remedial action.

Remedial Action under the ROD.

Excavation and treatment of contaminated surface soils, surface piles of battery casings, buried battery casings, matte (smelter waste), and other debris began in the summer of 1993. Excavated battery casings were processed through a battery treatment plant designed to separate materials (lead fines, metallic lead, clean plastic, and clean ebonite) for recycling. Contaminated soil and matte were stabilized and stored for backfill on the Site. Site operations included perimeter air monitoring and monthly groundwater monitoring at select wells on the Gould property.

In May, 1994, EPA, pursuant to the Unilateral Order, directed the Gould Site PRPs to evaluate alternative remedial actions and conduct test studies in order to improve efficiency and reliability at the Site. After this, work on the battery recycling process was limited to cleaning plastic for recycling while stabilization of other waste materials continued.

The Gould Site PRPs prepared a focused feasibility study (FFS) in response to the revised Unilateral Order. The FFS evaluated the treatment process and other potential treatment alternatives, including off-site disposal of waste materials. Following the submittal of the FFS, EPA determined that additional information and evaluation of organic contamination was necessary.

Most of the cleanup activity at the Gould site has been suspended pending an EPA determination on changes to the remedy previously selected in the ROD. Prior to suspension, an estimated 24,000 tons of contaminated battery casings were treated. Approximately 244 tons of plastic and 88 tons of coarse lead were recycled for reuse off-site. An estimated 20,000 blocks (1 cubic yard (cy) each) of stabilized material from contaminated soil, matte and debris) were produced. Several hundred tons of debris have been shipped off-site for disposal. The FFS estimated that 68,000 cy of untreated contaminated materials remain on-site. Of this amount, approximately 15,000 cy of contaminated material that has already been excavated is stockpiled on-site. Figure 2 shows the

lead impacted areas and locations of the stockpiles and stabilized blocks.

SCOPE AND ROLE OF OPERABLE UNIT REMEDIAL ACTION

The ROD issued in 1988 was for the Soils Operable Unit of the Gould Site. The Soils Operable Unit addresses lead contaminated battery casings, soil, sediment, debris, and other smelter waste at the Site. Lead contamination was the principal threat addressed in the ROD and is the primary contaminant of concern addressed in this ROD Amendment. A comprehensive discussion of the selected remedial action is included in the March 31, 1988 ROD.

The ROD stated that insufficient hydrogeologic information was available to make a decision on the groundwater unit. In order to gather additional information on groundwater contamination, EPA sent CERCLA 104(e), 92 USC §9604, information request letters to property owners in the Doane Lake area. After the ROD for the Soils Operable Unit was issued several industries in the area formed the Doane Lake Industrial Group (DLIG) and agreed to undertake an hydrogeologic investigation under a Consent Order with DEQ in 1990. A final report, *Hydrogeologic Investigation of the Doane Lake Area*, was submitted to DEQ in 1991. DEQ subsequently decided to focus on individual sites in the area rather than continue to pursue area wide studies with the industry group. The DLIG report data indicated that Rhone-Poulenc is a potential source of organic contamination in groundwater. DEQ is currently providing oversight of a remedial investigation and feasibility study, under an Order on Consent, at the RPAC site, adjacent to the Gould Site.

Additional groundwater and surface water investigations have been conducted as part of the remedial action and post-ROD investigation of the Site. Recent data from sampling of groundwater monitoring wells located on- and off-Site have not shown significant lead contamination. However, EPA does not anticipate making a determination on whether groundwater cleanup will be required until construction activities implemented in accordance with this ROD Amendment have been completed and groundwater quality has been monitored and evaluated. Groundwater monitoring will be conducted to determine the effectiveness of the lead-contaminated soil cleanup and to ensure that no contaminants were mobilized during implementation of the selected remedy.

SUMMARY OF SITE CHARACTERISTICS

A detailed description of the nature and extent of Site contamination is included in the administrative record for the ROD. Since the ROD was issued, significant additional information has been obtained regarding Site contamination.

Canonie Site Investigations

Canonie Environmental (Canonie), contractor for the Gould Site PRPs, performed a limited investigation of groundwater and soils in 1993 to estimate the risk to site workers from exposure to organic compounds and to identify potential production issues. Classes of compounds detected that could present a health risk to workers upon exposure included volatile organics, chlorinated herbicides, dioxins and furans, and phenols. Individual constituent concentrations in soil/fill and sediments were generally less than 1 mg/kg (less than 0.175 ug/kg for 2,3,7,8-TCDD). Based on a comparison of detected concentrations with personnel exposure standards, the risk of exposure to workers was estimated to be low. Canonie used a combination of engineering controls, safe work practices, and personal protective equipment to minimize worker exposure during remediation.

Canonie also determined that the organics in the excavated material would not affect the ability of the battery waste treatment plant to produce materials for recycle or the ability of the stabilization plant to generate stable materials for on-site disposal.

Canonie conducted additional site investigations in 1994 to develop a better estimate of the quantities of the various waste materials present at the site and delineate the extent of buried casings and matte. There were discrepancies between quantities of materials estimated in the ROD with those encountered during cleanup. The investigation determined that quantities of battery casings on the Gould property were significantly overestimated (54,100 cy ROD estimate vs 9,700 cy revised estimate). A summary of the ROD estimates and revised estimates is shown in Table 1. Table 1 also shows the estimated quantities that would be placed in the OCF and quantities that would be left in place under the ROD Amendment. Based on the revised estimates about 90 percent of the casings on the Gould property have already been excavated and treated.

Sampling and Analysis for Organic Constituents

Organic chemicals of concern have been encountered during a number of investigations of the Gould Site and surrounding areas. The source of the organic contamination at the Gould site is believed to be the former Rhone-Poulenc facility that was located

Decision Summary

for the Gould Site Soils Operable Unit Amended Record of Decision

INTRODUCTION

Site Name, Location and Description

The Gould Superfund Site (Site) is located in northwest Portland Oregon near N.W. 61st Avenue in the Doane Lake industrial area between N.W. St. Helens Road and N.W. Front Avenue. It includes property owned by Gould Electronics (approximately 9.2 acres) and portions of property owned by Rhone-Poulenc AG Company (Rhone-Poulenc or RPAC), Schnitzer Investment Corporation, ESCO Corporation, and Burlington Northern Railroad Company.

The Site is also adjacent to property owned by RPAC which was formerly used for the manufacture, formulation, and distribution of pesticide products. RPAC is conducting a Remedial Investigation and Feasibility Study of contamination associated with their property under a Consent Order with the Oregon Department of Environmental Quality (DEQ).

Lead and Support Agencies

The U.S. Environmental Protection Agency (EPA) is the lead agency with the Oregon DEQ the support agency for the Gould Superfund Site.

Statutory Citation for a Record of Decision (ROD) Amendment

Section 117(c) of CERCLA, 42 U.S.C. S9617(c), provides for addressing and documenting changes to the selected remedy after issuance of a ROD. This ROD Amendment documents the changes to the remedy set forth in the ROD. Since fundamental changes are being made to the remedy selected in the ROD, public participation and documentation procedures specified in the NCP, Section 300.435(c)(2)(ii) have been followed.

Date of ROD Signature

The ROD for the Gould Site Soils Operable Unit was signed March 31, 1988.

Need for the ROD Amendment

The remedial action selected in the ROD has been partially completed. The need for this ROD Amendment arose during remedial action as a result of technical concerns. EPA has since determined that the remedy selected in the ROD is no longer

appropriate for completing the cleanup based on operating experience and conditions at the Site.

Administrative Record

This ROD Amendment will become part of the administrative record for the Gould Site, as required by Section 300.823(a)(2) of the NCP, and will be available for public review at the information repositories listed below:

US EPA

Hazardous Waste Records Center, 7th Floor
1200 Sixth Avenue
Seattle, Washington 98101

Multnomah County Library
Central Library
801 SW Tenth Ave
Portland, Oregon 97204

SITE HISTORY

The Gould Site was listed on the National Priorities List (Superfund) in 1983 because of documented lead contamination. A secondary lead smelting facility was constructed on the current Gould property and began operations in 1949 under the ownership of Morris P. Kirk and Sons. Facility operations consisted of lead-acid battery recycling, lead smelting and refining, zinc alloying and casting, cable sweating, and lead oxide production. Discarded battery casings and other waste materials from the operations were disposed on the Gould property and adjacent properties. NL Industries purchased the property in 1971 and sold it to Gould in 1979. The facility was closed in 1981 and by the summer of 1982 most of the structures, facilities, and equipment had been removed.

The location of the Gould property and adjacent properties is shown on the attached Figure 1. A detailed description of the Site, including pre-1988 history, past waste disposal activities, Site characteristics, and enforcement history, is included in the 1988 ROD and administrative record.

Remedy Selected in the ROD

EPA signed a ROD in March, 1988 for the Soils Operable Unit of the Gould site. The selected remedy included:

- * Excavation of all of the battery casing fragments and matte from the Gould property and adjacent properties where casings have been identified;

- * A phased design program to determine the amount of material that can be recycled and to minimize the amount of material that must be RCRA landfilled;
- * Separation of the battery casing components;
- * Recycling of those components (or portions of components) that can be recycled, off-site disposal for non-recyclable components that fail the EP toxicity test, and on-site disposal of non-hazardous, non-recyclable components;
- * Excavation, fixation/stabilization and on-site disposal of the remaining soil, sediment, and matte;
- * Soil capping and revegetation;
- * Isolation of surface water runoff to East Doane Lake by site regrading; and
- * A monitoring program to determine changes in groundwater contamination over time and to ensure that remediation does not adversely impact air quality.

The selected alternative also included additional study of surface and groundwater in the area to help determine whether action needs to be taken to deal with the contamination beneath the Site.

Post ROD Site History

On February 29, 1988, EPA sent Special Notice letters to Gould and NL to negotiate remedial design/remedial action. On June 15, 1989, a Consent Decree to implement was entered into whereby NL agreed to perform predesign studies which evaluated the remedy selected in the ROD. The predesign studies, which included bench scale, pilot scale, and field demonstration testing, were completed in 1990. The studies evaluated several aspects of the cleanup remedy, including the ability of a proposed process to separate, clean and recycle the battery casing components. Following the review of the Predesign Report (January, 1991) EPA determined that the results met the criteria in the Record of Decision and the Consent Decree.

NL Industries agreed to complete the detailed design plans and specifications under a Consent Order with EPA. EPA approved the remedial design on September 30, 1991.

Special Notice Letters were sent on July 23, 1991, to 21 companies requesting that they provide good faith offers to undertake the cleanup of the site. EPA entered into a De Minimis settlement with six of the companies who were smaller.

contributors to pollution at the Site. The U.S. District Court for the District of Oregon approved entry of the De Minimis settlement in February, 1993. Negotiations between the other companies and EPA did not result in a settlement.

EPA issued a Unilateral Administrative Order to seven Gould Site potentially responsible parties (Gould Site PRPs) on January 22, 1992, which required them to implement the selected remedial action at the Gould Superfund Site. The seven companies named include past and present owners, past operators of the facility, and major contributors of waste sent to the site. The Gould Site PRPs have performed the directed remedial action.

Remedial Action under the ROD.

Excavation and treatment of contaminated surface soils, surface piles of battery casings, buried battery casings, matte (smelter waste), and other debris began in the summer of 1993. Excavated battery casings were processed through a battery treatment plant designed to separate materials (lead fines, metallic lead, clean plastic, and clean ebonite) for recycling. Contaminated soil and matte were stabilized and stored for backfill on the Site. Site operations included perimeter air monitoring and monthly groundwater monitoring at select wells on the Gould property.

In May, 1994, EPA, pursuant to the Unilateral Order, directed the Gould Site PRPs to evaluate alternative remedial actions and conduct test studies in order to improve efficiency and reliability at the Site. After this, work on the battery recycling process was limited to cleaning plastic for recycling while stabilization of other waste materials continued.

The Gould Site PRPs prepared a focused feasibility study (FFS) in response to the revised Unilateral Order. The FFS evaluated the treatment process and other potential treatment alternatives, including off-site disposal of waste materials. Following the submittal of the FFS, EPA determined that additional information and evaluation of organic contamination was necessary.

Most of the cleanup activity at the Gould site has been suspended pending an EPA determination on changes to the remedy previously selected in the ROD. Prior to suspension, an estimated 24,000 tons of contaminated battery casings were treated. Approximately 244 tons of plastic and 88 tons of coarse lead were recycled for reuse off-site. An estimated 20,000 blocks (1 cubic yard (cy) each) of stabilized material from contaminated soil, matte and debris) were produced. Several hundred tons of debris have been shipped off-site for disposal. The FFS estimated that 68,000 cy of untreated contaminated materials remain on-site. Of this amount, approximately 15,000 cy of contaminated material that has already been excavated is stockpiled on-site. Figure 2 shows the

lead impacted areas and locations of the stockpiles and stabilized blocks.

SCOPE AND ROLE OF OPERABLE UNIT REMEDIAL ACTION

The ROD issued in 1988 was for the Soils Operable Unit of the Gould Site. The Soils Operable Unit addresses lead contaminated battery casings, soil, sediment, debris, and other smelter waste at the Site. Lead contamination was the principal threat addressed in the ROD and is the primary contaminant of concern addressed in this ROD Amendment. A comprehensive discussion of the selected remedial action is included in the March 31, 1988 ROD.

The ROD stated that insufficient hydrogeologic information was available to make a decision on the groundwater unit. In order to gather additional information on groundwater contamination, EPA sent CERCLA 104(e), 92 USC §9604, information request letters to property owners in the Doane Lake area. After the ROD for the Soils Operable Unit was issued several industries in the area formed the Doane Lake Industrial Group (DLIG) and agreed to undertake an hydrogeologic investigation under a Consent Order with DEQ in 1990. A final report, *Hydrogeologic Investigation of the Doane Lake Area*, was submitted to DEQ in 1991. DEQ subsequently decided to focus on individual sites in the area rather than continue to pursue area wide studies with the industry group. The DLIG report data indicated that Rhone-Poulenc is a potential source of organic contamination in groundwater. DEQ is currently providing oversight of a remedial investigation and feasibility study, under an Order on Consent, at the RPAC site, adjacent to the Gould Site.

Additional groundwater and surface water investigations have been conducted as part of the remedial action and post-ROD investigation of the Site. Recent data from sampling of groundwater monitoring wells located on- and off-Site have not shown significant lead contamination. However, EPA does not anticipate making a determination on whether groundwater cleanup will be required until construction activities implemented in accordance with this ROD Amendment have been completed and groundwater quality has been monitored and evaluated. Groundwater monitoring will be conducted to determine the effectiveness of the lead-contaminated soil cleanup and to ensure that no contaminants were mobilized during implementation of the selected remedy.

SUMMARY OF SITE CHARACTERISTICS

A detailed description of the nature and extent of Site contamination is included in the administrative record for the ROD. Since the ROD was issued, significant additional information has been obtained regarding Site contamination.

Canonie Site Investigations

Canonie Environmental (Canonie), contractor for the Gould Site PRPs, performed a limited investigation of groundwater and soils in 1993 to estimate the risk to site workers from exposure to organic compounds and to identify potential production issues. Classes of compounds detected that could present a health risk to workers upon exposure included volatile organics, chlorinated herbicides, dioxins and furans, and phenols. Individual constituent concentrations in soil/fill and sediments were generally less than 1 mg/kg (less than 0.175 ug/kg for 2,3,7,8-TCDD). Based on a comparison of detected concentrations with personnel exposure standards, the risk of exposure to workers was estimated to be low. Canonie used a combination of engineering controls, safe work practices, and personal protective equipment to minimize worker exposure during remediation.

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Sampling and Analysis for Organic Constituents

Organic chemicals of concern have been encountered during a number of investigations of the Gould Site and surrounding areas. The source of the organic contamination at the Gould site is believed to be the former Rhone-Poulenc facility that was located

adjacent to the Gould Site. Because of the presence of organic contamination in the Gould Site Soils Operable Unit, additional site investigation has been conducted by the Gould Site PRPs and Rhone-Poulenc.

The information regarding organic contamination in surface and groundwater developed in earlier investigations (including the 1993 Canonic investigation) was reviewed and summarized in the *Review of Organics Data Collected at the Gould Superfund Site* (ENVIRON 1994). Groundwater samples collected at the Site from wells and temporary well points on Rhone-Poulenc property have had the following types of organic compounds reported: phenols, herbicides, dioxins, and furans. Organic compounds detected in surface water samples from the open excavation on the Lake Area portion of the Rhone-Poulenc property include 1,2-dichlorobenzene; 2,4-D; 2,4,5-T; 2,4,5-TP (Silvex); xylenes; dioxins and furans.

The highest concentrations of organics are associated with NAPLs, which have been found at depth below the RPAC former manufacturing plant property and the adjoining southwest corner of the Gould property. There have also been indications that NAPL may be present in the Lake Area (formerly referred to as the RPAC Phase III area).

Additional information regarding organic chemicals in East Doane Lake sediments, stockpiled material, and stabilized blocks was collected and presented in the *Amended Remedy Document* (ENVIRON 1996). In general, the highest concentrations of organics in the East Doane Lake sediments are in the shallow zone (upper 2 ft). The shallow sediments also contain lead levels that exceed the RCRA hazardous waste characteristic of EP toxicity, the cleanup level set in the ROD. The levels of organics reported do not appear to have had a significant adverse impact on lead stabilization.

Surface water from the East Doane Lake remnant was sampled in July 1995 by the Gould Site PRP Group. Chemicals detected in the water sample included metals (cadmium, chromium, lead, and zinc); petroleum hydrocarbons; herbicides (2,4-D, 2,4,5-T, and 2,4,5-TP); and furans.

Rhone-Poulenc Investigation

Rhone-Poulenc is conducting a Remedial Investigation/Feasibility Study (RI/FS) of soils and groundwater contamination. The RPAC RI/FS is investigating contamination of a large area which includes properties within the Gould Site. The RPAC RI/FS is being conducted under a Consent Order with DEQ pursuant to State authority. A substantial portion of the area to be remediated

for lead under the 1988 ROD is located in the Lake Area portion of the Rhone-Poulenc property.

Sediment Sampling and Investigation

Sediment samples in the East Doane Lake remnant were collected in 1994 at 16 locations. The samples were analyzed for total and leachable lead to estimate the volume of sediment to be remediated for lead. Additional samples were collected in 1995 at the same locations and were analyzed for organic constituents, including organochlorine insecticides, PCBs, and dioxins and furans. The frequency of detections and concentrations of organic compounds generally decreased with depth.

RPAC is conducting an evaluation of organic contamination in East Doane Lake sediments. Because the 1.5 to 2.0 feet of sediment fails RCRA EP Toxicity criteria for lead, the RPAC evaluation assumes those sediments will be removed and placed in the OCF as part of the remedial action under the Gould Site Amended ROD. The RPAC evaluation is being conducted as an Interim Remedial Measure under the RPAC RI/FS Consent Order. Results from this evaluation should be available prior to completing the final design of the remedy in this ROD Amendment. The RPAC evaluation will assess the impacts of organic contamination in the sediments on downgradient current and reasonably likely beneficial use of groundwater. If remedial action for the sediments below the anticipated 1.5 to 2.0 foot excavation depth under the Gould Site Amended ROD is deemed warranted by DEQ, the work will be conducted as a time-critical action under State authority. EPA and DEQ intend that additional excavation would occur during the Gould Site excavation to avoid unnecessary delay in the implementation of the amended remedy at the Gould Site. EPA and DEQ will consider allowing disposal of additional sediments in the OCF.

Amended Remedy Document

The Gould Site PRPs submitted a proposed alternative cleanup plan to EPA in October 1995. The proposed alternative which the PRPs submitted for EPA consideration was included in the *Amended Remedy Document* (ARD).

The proposed remedy called for consolidating the stockpiled contaminated soil, debris, and stabilized blocks within the area of contamination, and placing them in an OCF that includes a leachate collection system. The Gould Site PRPs proposed that the OCF be located on Gould property. The proposal also required that the East Doane Lake remnant be dredged and filled with clean fill, and that the excavated sediments be dewatered before placement in the OCF.

The proposal included a conceptual design of the OCF. EPA and DEQ identified several issues related to the proposal, including those listed below.

- 1) The design needs to provide for adequate control of water during the filling of the East Doane Lake remnant, and monitoring and control of potential impacts from displacement of contaminants in East Doane Lake water and sediments.
- 2) The OCF must be designed to accomodate implementation of future RPAC groundwater cleanup actions. This may reduce the area on the Gould property available for the OCF.
- 3) The OCF must be designed to provide control of stormwater runoff and leachate.

Wetlands Investigation and Evaluation

An evaluation of the potential impacts associated with the proposed dredging and filling of the East Doane Lake remnant was performed by the Gould Site PRPs. The report, entitled the *Wetlands Investigation of East Doane Lake* (Woodward Clyde, April 1996), classified East Doane Lake as non-wetland "open water" which has a well-defined bank and ordinary high water mark. A total of only 0.04 acre (1670 square feet) was considered wetlands. Wetland areas identified in the 1996 study are shown in Figure 3.

The East Doane Lake remnant is approximately 3.1 acres in size and located on the Gould and Schnitzer properties. It is the remnant of a larger water body that has been gradually filled as a result of industrial development and waste disposal activities, which includes the disposal of smelter and battery waste generated by the former operations on the Gould property.

EPA has reviewed the proposed action for compliance with the requirements of the Clean Water Act Section 404(b)(1) Guidelines. The Guidelines provide flexibility to adjust the stringency of the review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include projects that are located in aquatic resources of limited natural function and projects that are small in size and have little direct impact.

The East Doane Lake remnant is already impacted by existing chemical contamination, and is considered an aquatic resource of very limited natural function. Significant adverse impacts to the aquatic environment are already occurring at the site. East Doane Lake has been used for industrial waste discharge from the lead smelting facility formerly located on the Gould property, an

acetylene gas production facility formerly located on the Schnitzer site, and the herbicide production facility formerly located on the Rhone-Poulenc site. Remediation of the contaminated portions of the Gould Site Soils Operable Unit are expected to reduce or eliminate exposure to contaminated sediments and possible uptake of contaminants from the sediments into the aquatic environment.

The dredging of East Doane Lake was a component of the original remedy and is anticipated to have minor adverse impacts because of the limited and degraded nature of the aquatic ecosystem and organisms. Filling of East Doane Lake remnant with clean imported fill will eliminate the East Doane Lake aquatic ecosystem. Existing biological communities in the East Doane Lake remnant are considered to be degraded due to physical and chemical intrusions.

EPA has concluded that the 1988 ROD remedy is not a practicable alternative for completing the cleanup of the Gould site. Other alternatives evaluated in the 1994 FFS included: on-site stabilization with a combination of on-site and off-site disposal, on-site stabilization with on-site disposal of all stabilized material, on-site stabilization with off-site disposal, and off-site stabilization with off-site disposal.

The on-site disposal options included filling portions of the East Doane Lake remnant and/or constructing a disposal facility that would preclude reasonable future use of the property. Off-site disposal may be a viable option that could require additional treatment of significant quantities of the waste for organic constituents in addition to treatment for lead to meet RCRA land disposal restrictions. The alternatives were not considered to have significantly less impact on the aquatic ecosystem or the environment as compared to the proposed remedy to offset the increased costs and loss of reasonable future use of the property. Off-site disposal of some site materials would be allowed as a component of the proposed amended remedy.

EPA has further determined there is a greater net environmental benefit to be gained from protecting and/or enhancing a nearby off-site area with more suitable habitat potential than by selecting a remedial action that would protect an unsuitable habitat.

A mitigation/restoration plan will be required to compensate for the loss of the wetlands and open water habitat as part of the remedial action.

Proposed Plan

EPA issued a proposed plan for public comment that described EPA's preferred alternative for completing the cleanup of the Soils Operable Unit on April 1, 1996. The proposed alternative in the plan was based on the PRP proposal described in the ARD. The thirty day comment period on the plan was extended an additional thirty days at the request of one commentor.

Reasons for Issuing ROD Amendment

- 1) The battery casings treatment process is not an efficient or cost effective method of completing the site cleanup.

For several months the battery plant separated and treated contaminated casings excavated from the Site. However, this process was limited by operating problems. It was difficult to process the highly variable waste feed and produce consistent results in spite of making numerous modifications to improve the process. Battery casing fragments from the RPAC and ESCO properties are mixed with wood chips and other porous material that could not be cleaned effectively or separated from the ebonite and plastic. As a result, both the plastic and ebonite output from the plant often failed the EP Toxicity and TCLP tests for lead and had to be reprocessed. A detailed description of the operation of the battery plant is included in the FFS.

Estimated costs to complete the project using the battery processing plant increased substantially since the start of cleanup. The cost of the cleanup was estimated at the end of remedial design to be approximately \$20 million. Revised estimates based on operating experience and updated information on waste quantities and characteristics were \$40 to \$56 million.

- 2) Only limited quantities of processed materials were recyclable, and most of the remaining waste is not recyclable

The battery plant produced coarse metallic lead (88 tons) and plastic (255 tons) products for recycle. The ebonite and lead fines products have not been recycled. Most of the remaining battery casings on the Site are located on the RPAC property, and significant quantities of coarse lead have not been recovered from this area. Most of the remaining untreated casing fragments on the Site are composed of ebonite. There is essentially no demand for the ebonite product and the ebonite treated to date is stockpiled on the Site. The lead fines product was much lower in concentration than was anticipated, and was not recyclable. The lead fines are also stockpiled on the Site.

3) Volume and nature of waste materials were different from RI estimates.

The results of additional investigation show that the amount of battery casings on the Gould property was overestimated in the ROD, and that most of the remaining subsurface material on the Gould property is matte, slag and debris (see Table 1). Post-ROD investigation and monitoring also indicate that stabilization to reduce the mobility of this material will be of questionable benefit because there is little evidence that lead associated with the subsurface matte material is mobile or has had a significant impact on area groundwater. There is also evidence that lead contaminated material is also contaminated with organics (presumably from the former RPAC facility).

4) Cleanup activities need to be coordinated with the RPAC RI/FS.

Approximately 10,215 cubic yards of casings have been excavated and treated from the Lake Area of the RPAC property portion of the Gould Site. The remaining casings, an estimated 17,500 cubic yards, are beneath several feet of other fill material and generally below the water table. Further subsurface excavation in these areas may adversely affect the migration of RPAC organic contaminants. RPAC is currently investigating this area under the Consent Order with the DEQ. DEQ and EPA agree that the remaining battery casings in the Lake Area should not be excavated until completion of the RPAC RI/FS. EPA will coordinate future cleanup determinations and remedial actions located on this portion of the Site with DEQ.

COMPARISON WITH THE NINE CERCLA EVALUATION CRITERIA

The proposed amended remedy includes excavation of the remaining battery casings on the Gould and Schnitzer properties portions, dredging and de-watering lead-contaminated sediments from East Doane Lake; containment of sediments, stockpiled materials (including previously treated materials), shallow soils, and debris in a lined and capped OCF located on the Gould property. The proposed OCF would cover most of the Gould property, approximately 8.5 acres, including the area now within East Doane Lake.

The NCP establishes nine criteria for evaluating remedial action alternatives. A discussion of the original remedy and amended remedy relative to the nine criteria is required by CERCLA. This section discusses the proposed changes to the existing remedy.

Overall protection of human health and the environment.

This criterion addresses whether a remedial alternative protects human health and the environment. Protection is determined by assessing whether the risks associated with each exposure pathway (i.e., ingestion of soil, ingestion of groundwater) are eliminated, reduced, or controlled through treatment and engineering or institutional controls.

The potential critical pathways for lead identified in the endangerment assessment portion of the ROD were airborne exposure from on-site fugitive dust emissions, incidental oral ingestion of contaminated battery casings, matte and soil, and dermal contact and incidental ingestion of lead from surface water in the East Doane Lake remnant. The remedy in the ROD relied on treatment and recycling to reduce exposures. Contaminated material treated by stabilization would be backfilled on the Site.

The ROD Amendment still addresses lead as the primary contaminant of concern and provides additional protection for organic chemicals that are commingled with waste materials to be placed in the OCF. Routes of potential exposure to the materials placed in the OCF are eliminated by the liner and cap. The OCF will have a leachate collection system which will further protect groundwater quality.

Subsurface battery casings located on the RPAC and ESCO properties will not be excavated pursuant to this Amended ROD. The subsurface casings are located beneath several feet of other fill material and generally below the water table. The primary exposure pathway associated with the subsurface battery casing materials on this portion of the Site is groundwater, and there are concerns that continued excavation (especially in the southern portion of the Lake Area) could adversely affect the migration of organic contamination that is currently being characterized as part of the RPAC RI/FS.

Air monitoring conducted at the Site during past excavation has not detected levels of airborne contamination that constitute an unacceptable risk to human health and the environment.

Compliance with ARARs. The selected remedial action must comply with identified substantive applicable requirements under federal and state laws. The selected remedial action must also comply with laws and regulations that are not directly applicable but do pertain to situations sufficiently similar to those encountered at the Site, so that use of the requirements is well suited to the Site cleanup. These are known as relevant and appropriate requirements. Evaluation of remedial alternatives with chemical-location-, and action-specific ARARs is necessary for determining compliance.

Both the ROD alternative and ROD Amendment alternative comply with ARARs. The ROD Amendment alternative will comply with federal and state ARARs by providing specific design and operating conditions that are developed to comply with specific requirements of these ARARs.

Long-term effectiveness and permanence. This criterion evaluates the ability of a remedial alternative to maintain reliable protection of human health and the environment once remediation goals have been achieved. The magnitude of the residual risk is considered as well as the adequacy and reliability of controls.

The ROD relied on treatment of lead contaminated materials to address health and environmental hazards. It was anticipated that removal and successful separation of the battery casing fragments would substantially reduce sources of pollution at the Site, and contamination in all media would decrease. Residual risk remaining after remediation would have been primarily posed by unremediated surface soils, groundwater and surface water. The ROD also assumed that backfilling the treated material on the Site without additional containment would be an effective long-term solution.

Under the ROD Amendment, the OCF will be designed, constructed, and monitored to ensure long-term effectiveness and permanence. Direct contact will be eliminated because the wastes will have been contained and/or capped, and the risk of leaching to ground water will be greatly reduced by the liner and leachate collection system. The liner and cap system will provide greater protection from organic contamination that is commingled with the lead contaminated waste than the remedy in the ROD. Further, containment of the contaminated wastes in the OCF reduces the potential for exposure to lead contamination from treated materials that could be affected by weathering or other factors if backfilled directly on the Site.

Long-term effectiveness under the ROD and the ROD Amendment is also dependent on assuming future land use is limited to approved industrial or other appropriate activities.

Reduction of toxicity, mobility or volume through treatment. This criterion addresses the statutory preference for selecting remedial actions that use treatment technologies that permanently reduce the toxicity, mobility or volume of the hazardous substances.

The treatment required in the original ROD remedy included waste separation and recycling of lead, plastic, and ebonite, and stabilization to reduce the mobility of lead. Stabilization reduces mobility but does not reduce the toxicity or volume of

waste material. Significant quantities of lead contaminated material have been treated as part of the remedial action that was partially implemented at the site. Approximately 20,000 cubic yards of waste have been stabilized to inhibit the migration of lead. A substantial portion of the principal threat lead waste has already been treated.

The ROD Amendment uses a combination of treatment and containment to reduce the mobility of lead. Lead remaining in the various waste materials does not appear to be highly mobile in groundwater. The aboveground, lined and capped OCF minimizes the low level threat of lead associated with potential leaching to groundwater. In addition, the threat of potential direct contact is limited by the containment and capping. Principal threat waste material will be treated prior to placement in the OCF to limit the potential release of the highly contaminated material in the unlikely event of a release from OCF.

Short-term effectiveness. This criterion refers to the period of time needed to achieve protection, and any adverse impacts on human health and the environment, specifically site workers and community residents, that may be posed during the construction and implementation period until cleanup goals are achieved.

Short term impacts for the amended remedy are similar to those identified in the remedy under the ROD. The potential short term community risk is inhalation of airborne dust during movement of the impacted materials. Site ambient air monitoring conducted during excavation and treatment activities indicates airborne contaminant concentrations of concern can be controlled to prevent levels that pose unacceptable risk. Typical personal protective measures will be taken to protect workers from airborne and dermal contact with contaminants.

Short term impacts associated with the dredging of East Doane Lake remnant, including increased concentrations of dissolved and suspended contaminants, were identified in the original remedy. The filling of the East Doane Lake remnant must occur at a rate that allows for gradual dissipation of displaced water. In addition, the use of temporary plastic covers for waste placed in the OCF will minimize potential exposures prior to final capping.

Implementability. This criterion refers to the technical and administrative feasibility of a remedial alternative, including the availability of goods and services needed to implement the selected remedy.

The treatment and recycle remedy selected in the ROD was partially implemented at the Gould site. Implementation of the remedy was difficult and cost estimates for completing the remedy

increased substantially. Although some phases of the cleanup were successful, continued operation of the treatment process was not a practical alternative for completion of the Gould site remedial action.

The excavation and construction of the OCF can be implemented using established engineering and construction techniques. A detailed design phase will be required, however, to ensure that construction and operation of the OCF will be adequately protective. The design will include special considerations for dredging and filling of the East Doane Lake remnant and handling of site materials. The services and materials to be utilized are readily available (e.g., import of fill materials, construction of liners, and placement of an asphalt cap).

Cost. Evaluation of project costs requires an estimation of the net present value of capital costs and O&M costs. The costs presented below (and in the 1996 ARD) are estimates. Actual costs could vary based on the final design and detailed cost itemization.

The total cost associated with the original remedy as estimated in the ROD was approximately \$20.5 million, including capital cost of about \$3.5 million and O&M cost of about \$17 million (present worth). The estimated construction cost to date was estimated in the ARD at approximately \$16.5 to \$20.7 million, depending on adjustments for plant equipment amortization and contractor retentions. The cost associated with completing the remedy, with some modifications to optimize some process operations, was estimated at approximately \$40.8 million.

The total estimated cost associated with the ROD Amendment remedy was estimated in the ARD at \$10.5 million, including capital cost of about \$10.1 million and O&M cost of about \$400,000 (present worth). Additional costs associated with treatment and East Doane Lake mitigation could increase the capital cost an estimated \$1.5 to \$2 million.

State acceptance. DEQ has been actively involved with the development and review of the ARD, the Proposed Plan, and this ROD Amendment. The State of Oregon concurred with the 1988 selected remedy and concurs with this ROD Amendment. A letter of concurrence is included as Appendix B.

Community acceptance. The Proposed Plan was released to the public on March 31, 1996. EPA provided a thirty day public comment period to accept comments on the proposed amendment. A notice of availability of the Proposed Plan and the administrative record was published in the Oregonian on March 28, 1996. The comment period began on April 1, 1996 and was extended an additional thirty days at the request of one commentor. EPA

received one letter with several comments during the extended public comment period for this ROD Amendment. The Responsiveness Summary provides EPA responses to the specific comments.

DESCRIPTION OF THE SELECTED REMEDY

Based upon a consideration of the requirements of CERCLA, the comparative analysis of alternatives, and consideration of public comments, both EPA and DEQ have determined that the proposed amended remedy is the most appropriate remedy for completing the cleanup of the Gould Site Soils Operable Unit.

The major components of the selected remedy include:

- * Perform design studies to evaluate site constraints and design parameters, including the following: consolidation and settlement, lateral and vertical support, dewatering sediments, stormwater runoff and control, leachate collection, treatment and disposal, and hydrogeologic impact of filling East Doane Lake remnant and the open excavation (also known as the Lake Area or Phase III Area) portion of the Rhone-Poulenc property;
- * Construction of an OCF on the Gould property, which has a leachate collection system and allows for implementation of future Rhone-Poulenc cleanup actions;
- * Treatment (stabilization or fixation) of the lead fines stockpile (S-15) and the screened Gould excavation stockpile (S-22), and other lead contaminated material identified as principal threat waste;
- * Excavation and dewatering of EDLR sediments contaminated above specified cleanup levels;
- * Excavation of the remaining battery casings on the Gould property;
- * Consolidating contaminated material, including sediments, treated and untreated stockpiled materials, casings, soil and debris in the lined and capped OCF;
- * Filling the East Doane Lake remnant and the open excavation on the Lake Area portion of the Rhone-Poulenc property with clean fill material;
- * Mitigation/restoration to compensate for the loss of East Doane Lake wetland and open water habitat. A proposal identifying work to be performed, including at least one

off-site mitigation proposal, shall be submitted with the final design report;

- * Institutional controls, such as deed restrictions or environmental protection easements, which provide access to EPA for the purpose of evaluating the effectiveness of the remedial action, and which limit future use of properties within the Site to (1) industrial operations or other uses compatible with the protective level of cleanup achieved after implementation of the selected remedial action, (2) uses which do not damage the OCF cap and liner system or cause releases of buried materials;
- * Performing groundwater monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and
- * Long-term operation and maintenance, including but not limited to, cap maintenance, leachate collection and treatment, stormwater runoff control, and reviews conducted no less often than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment.

Design requirements described elsewhere in this document are also considered part of the selected remedy. A summary of design requirements referenced in this document is attached in Appendix D.

The selected remedy will also allow off-site disposal of contaminated materials from the Gould site at regulated Subtitle D or Subtitle C disposal facilities. Off-site disposal may be necessary because of the uncertainty associated with final site quantities and design constraints. The selected remedy defers a cleanup decision on subsurface waste materials located on the Rhone-Poulenc and ESCO properties.

Comparison of ROD with the ROD Amendment

The following lists each of the elements from the existing ROD, followed by a brief description of the actions that have been completed or partially completed to date, and a comparison with the corresponding element in the ROD Amendment.

- * ROD - Excavation of all of the battery casing fragments and matte from the Gould property and adjacent properties where casings have been identified;

Status - Partially completed. An estimated 24,500 tons of battery casings have been excavated and treated as part of the remedial action under the ROD. This represents about

56% of the estimated total. Approximately 18,500 tons of battery casings remain; 900 tons on the Gould property and 17,500 tons on the Rhone-Poulenc and ESCO properties.

ROD Amendment - Excavation of remaining battery casing fragments (900 tons) from the Gould property. Excavation of remaining matte from the Gould property located above the water table only. The decision on whether to excavate the 17,500 tons of casing fragments on the Rhone-Poulenc/ESCO properties will be deferred until completion of the Rhone-Poulenc RI/FS. As previously described, the casings on the Rhone-Poulenc/ESCO properties are located beneath several feet of fill.

- * ROD - A phased design program to determine the amount of material that can be recycled and to minimize the amount of material that must be RCRA landfilled;

Status - Completed

- * ROD - Separation of the battery casing components;

Status - Partially completed (see quantity estimates above).

ROD Amendment - consolidate remaining battery casings from the Gould property in the OCF.

- * ROD - Recycling of those components (or portions of components) that can be recycled, off-site disposal for non-recyclable components that fail the EP toxicity test, and on-site disposal of non-hazardous, non-recyclable components;

Status - Recycling of components that can be recycled has been completed. The following components were recovered from the battery treatment process: 1) coarse lead, 2) fine lead, 3) plastic battery casing fragments, and 4) ebonite battery casing fragments. The coarse lead (88 tons) and plastic battery casing fragments (244 tons) were recycled. There was no market for the treated ebonite battery casing fragments. An estimated 7,500 tons is stockpiled on-site. The fine lead product was lower in concentration than anticipated for recycling (8 to 12% actual vs 40% design). An estimated 2,600 tons of lead fines is stockpiled on-site.

ROD Amendment - Further recycling is not an objective of the ROD Amendment.

- * ROD - Excavation, fixation/stabilization and on-site disposal of the remaining soil, sediment, and matte;

Status - An estimated 20,000 blocks (approximately one cubic yard each) of stabilized soil, matte and debris have been produced and stockpiled on-site. An estimated 22,400 cy of matte, slag and debris remains on the Gould site and 18,300 cy of contaminated overburden, fill and subsoils remain on the Rhone-Poulenc/ESCO properties.

ROD Amendment - Stabilized blocks and other contaminated material, including sediments, soil and matte located above the water table on the Gould property, will be consolidated in the OCF. Waste material greater than 40,000 mg/kg lead will be treated by stabilization or fixation prior to placement in the OCF. Surface soil contaminated above the 1000 mg/kg lead cleanup level on the Rhone-Poulenc and ESCO properties will be consolidated in the OCF. The other contaminated material located on the Lake Area portion of the Rhone-Poulenc property and the ESCO property will be addressed as described below.

- * ROD - Soil capping and revegetation;

Status - excavated areas have not been capped

ROD Amendment - The OCF will be located on the Gould property and will have a multi-media cap covered by asphalt. EPA has determined, in consultation with DEQ, that a final decision on the need for a soil cap or other remediation of lead contamination in the Lake Area portion of the Rhone-Poulenc property and the ESCO property should be deferred until after the following actions have been completed: 1) removal of treated and untreated Gould Site waste material currently stockpiled on the Rhone-Poulenc property, 2) surface soil removal and confirmation sampling, and 3) completion of a risk assessment for organic contamination in soil in the Lake Area.

- * ROD - Isolation of surface water runoff to East Doane Lake by site regrading;

Status - Not completed

ROD Amendment - After completing the removal of lead contaminated sediments, the East Doane Lake remnant will be filled with clean fill. Surface water runoff from the OCF will be collected for discharge via storm drains.

- * ROD - A monitoring program to determine changes in groundwater contamination over time and to ensure that remediation does not adversely impact air quality.

Status - Ongoing

ROD Amendment - Air and groundwater monitoring will be conducted as part of the remedy.

Description of Changes to the Remedy

Several elements of the amended remedy are fundamental changes from the remedy described in the ROD. The major changes to the remedy are described below:

- 1) The contaminated materials that are stockpiled on-site and additional contaminated material to be excavated will not be treated in the battery treatment/recycle plant. The treatment/recycle plant has been decontaminated and disassembled. Instead, these contaminated materials will be consolidated, after treatment by stabilization or fixation of principle threat material (contaminated material above 40,000 mg/kg lead), in an OCF which will be constructed on the Gould property. The OCF will provide additional protection from organic contamination that is commingled with lead waste by eliminating pathways of exposure. The OCF will be designed to meet minimum technology requirements for RCRA Subtitle C landfills, including liners, leachate collection, and a cap. The RCRA Subtitle C cap will reduce direct contact/ingestion threat, air emissions and infiltration of water through the waste material. The liner will provide additional protection against leaching and as a barrier which further protects groundwater.
- 2) The lead fines stockpile (S-15) will not be recycled but will be treated by stabilization or fixation to meet RCRA land disposal restriction treatment standards and reduce the leaching potential of this material. The lead fines will be placed in the OCF after treatment. In addition, the screened excavation stockpile (S-22), which is considered principal threat material because of the high level of lead contamination (55,000 ppm lead), will be treated prior to placement in the OCF. Because the liners and cap provided with the OCF are as protective as treatment for non-principle threat lead waste, lower levels of lead contaminated material will not be treated.
- 3) Excavation of matte (a smelter waste material that was deposited on the Gould property) will be limited to material above the water table. Excavation of subsurface matte and debris below the water table will not be required under the ROD Amendment. Groundwater monitoring will be conducted to ensure that these remaining materials below the water table are not impacting groundwater.
- 4) Excavation of subsurface soil and the remaining battery casings on the Rhone-Poulenc and ESCO property portions of the Site will not be included in the remedy at this time. EPA will

reassess the need for further remedial action for subsurface soils and other waste materials after the stockpiled materials currently located on the property have been moved to the OCF and a risk assessment for the organic constituents has been completed as part of the Rhone-Poulenc RI/FS. EPA may, later, determine that disposal of subsurface materials or other waste materials from the Rhone-Poulenc and ESCO properties in the OCF is appropriate.

5) The East Doane Lake remnant will be filled to provide additional surface area for construction of the OCF, and to eliminate surface water pathways of exposure in this area.

The selected remedy includes excavation of the remaining battery casings on the Gould and Schnitzer property portions of the Site, dredging and de-watering of lead-contaminated sediments from the East Doane Lake remnant (EDLR); containment of sediments, stockpiled materials, including previously treated materials, shallow soils, and debris in a lined and capped on-site containment facility to be located on the Gould property. The proposed OCF will cover approximately 8.5 acres, most of the Gould property, including the area now within the EDLR. Potential future industrial uses of the Gould property will be considered in the design of the facility to the extent practicable.

When completed, the OCF is expected to contain approximately 60,000 cy of contaminated waste material, sediment, soil, and debris. The OCF will have a total thickness of approximately eight feet, including bottom liner, waste and impacted soil, cap system, and asphalt surface. A cross section of the proposed containment facility showing conceptual liner and cap details is presented in Figure 4. Final design of the containment facility will be subject to approval by EPA.

Ambient air monitoring around the site will continue during construction to ensure that remedial actions are carried out in a manner that is protective of public health. Monitoring of groundwater at the site will be conducted as part the closure and O & M requirements for the OCF and to ensure that the proposed remedy remains protective of area groundwater. Long term O & M will include cap maintenance, leachate collection and treatment, stormwater runoff control, institutional controls and reviews conducted no less often than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment.

Cleanup Goals

The remediation goals in the original ROD are being retained with some exceptions. The goals for the various media are described below:

- * The surface soil cleanup level for lead is 1,000 ppm, the cleanup level established in the ROD.
- * The subsurface cleanup level for lead was the RCRA characteristic waste EP toxicity criteria. For newly generated waste, this test has been replaced by the TCLP criteria since the ROD was signed. EPA will allow use of the EP Toxicity criteria for materials that remain on-site to avoid having to retest material already characterized under the ROD.
- * Not all subsurface soils and contaminated material that exceed EP Toxicity criteria will be removed under the ROD Amendment. EPA has determined that the buried matte material on the Gould property does not pose a significant risk for contamination of groundwater based on supplemental analysis, including additional leaching test information, conducted on this material. EPA will reassess the need for remedial action for subsurface soils and other waste materials in the Lake Area portion of the Rhone-Poulenc property after the stockpiled materials currently located on the property have been moved to the OCF and a risk assessment for the Rhone-Poulenc constituents has been completed.
- * Treatment and recycle of battery casings will no longer be an objective of this remedial action.

Remedial Action Performance Standards

The Soils Operable Unit remedial action area is shown in Figure 5. The Soils Operable Unit remedial action shall be completed subject to the following standards of performance:

- A. Within the Operable Unit remedial action areas, all surface soil with lead concentrations of 1,000 ppm or above shall be excavated and placed in the on-site containment facility. There are no specific ARARs for lead in industrial soil; however, a surface soil cleanup level of 1,000 ppm was established in the ROD. EPA set the lead cleanup level at 1,000 ppm for surface soil based on current and future industrial land use. The 1,000 ppm cleanup level is sufficiently protective

for on-site workers, and has been used in the past for similarly contaminated sites where the expected future land use is industrial. This is consistent with the present and anticipated future land use.

- B. Contaminated waste shipped off-site must meet all applicable regulations including RCRA requirements for defining, characterizing and listing hazardous waste (40 CFR 261), land disposal restrictions (40 CFR 268) and EPA's Off-Site Disposal Rule (40 CFR 300.440). Any off-site transportation of RCRA characteristic soil must comply with RCRA hazardous waste manifesting and transporter requirements (40 CFR 262 subpart B and 40 CFR 263), the Department of Transportation Hazardous Materials Regulations which address shipment of any hazardous material off-site, and Oregon Administrative Rules (OAR Chapter 340, Division 101-105).
- C. On-site excavation of contaminated soils and sediments will be by conventional protective methods. During these activities, air monitoring will be conducted and dust suppressive measures will be utilized to control the release of dust and particulates. These measures will comply with the applicable federal Clean Air Act requirements (40 CFR Part 50) and Oregon Administrative Rules.
- D. Occupational Safety and Health Act (OSHA) requirements (29 CFR Part 1910 and 1926) pertain to workers engaged in response or other hazardous waste operations. Lead-contaminated soil excavation is considered a hazardous waste operation at this Site. Although this regulation is not an ARAR, remedial workers must comply with these OSHA requirements.
- E. Dredging and filling of the East Doane Lake remnant is subject to the requirements of Section 404 of the Clean Water Act, and a mitigation/restoration plan will be required.
- F. The OCF will be constructed above the water table and will be designed, constructed and operated to meet 40 CFR 264 Subpart N requirements for landfills, including: 1) 264.301 design and operating requirements for liners and leachate collection systems, 2) 264.303 monitoring and inspection requirements, 3) 264.310 closure and post-closure care requirements for covers which minimize migration of liquids, function with minimum maintenance, and provide long-term integrity. 40 CFR 264 Subpart G, Closure and Post-Closure requirements are also relevant and appropriate

requirements, specifically 1) 264.111 closure performance standard, 2) 264.114 disposal/decontamination requirements for soils, equipment, and structures, and 3) 264.117 post-closure care and use of property.

- G. Stormwater runoff and leachate collected from the OCF will be managed in accordance with requirements of the Clean Water Act and Oregon Administrative Rules.
- H. Groundwater monitoring will be required to ensure that the remedy is protective of Site groundwater and complies with RCRA closure and post-closure requirements.

Assessment of Further Remedial Action for the Lake Area

EPA has determined, in consultation with DEQ, that a final decision on the need for a soil cap or other remedial action for subsurface lead contamination in the Lake Area should be deferred until after the following actions have been completed: 1) removal of treated and untreated Gould site waste material currently stockpiled on the Rhone-Poulenc property, 2) removal of surface soil contaminated above 1,000 mg/kg lead, 3) confirmation sampling, and 4) completion of a risk assessment by Rhone-Poulenc for organic contamination in the Lake Area.

STATUTORY DETERMINATIONS

EPA's primary responsibility at CERCLA sites is to undertake remedial actions that are protective of human health and the environment. In addition, Section 121 of CERCLA, 42 U.S.C. §9621, establishes several other statutory requirements and preferences including: (1) a requirement that the remedial action complies with applicable or relevant and appropriate environmental standards established under federal and state laws unless a statutory waiver is invoked; (2) a requirement that the remedial action be cost-effective and utilize permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable; and, (3) a statutory preference for remedies that permanently and significantly reduce the volume, toxicity or mobility of hazardous substances over remedies that do not achieve such results through treatment.

The selected remedial action meets the statutory requirements of CERCLA, and, to the extent practicable, the NCP. The evaluation criteria are discussed below.

Protection of Human Health and the Environment:

The amended operable unit remedial action is protective of human health and the environment. It reduces risks associated with lead contamination by excavating contaminated material, treating highly contaminated material, and placing contaminated material in the lined and capped on-Site containment facility.

While this remedial action will address contaminated soils above levels protective of on-Site workers under a future industrial land use scenario, lead will remain above residential health-based levels thereby prohibiting unrestricted future land use. Reviews will be conducted no less often than every five (5) years following initiation of the remedial action to ensure adequate protection of human health and the environment.

Compliance with Applicable or Relevant and Appropriate Requirements:

Pursuant to Section 121(d) of CERCLA, 42 U.S.C. §9621(d), and Section 300.435(b)(2) of the NCP, remedial actions shall, during their implementation and upon their completion, reach a level or standard of control for such hazardous substances, pollutants or contaminants which at least attains legally applicable or relevant and appropriate federal standards, requirements, criteria, or limitations, or any promulgated standards, requirements, criteria, or limitations under a state environmental or facility siting law that is more stringent than any federal standard (ARARs).

The selected remedial action satisfies the requirements of this section of CERCLA by complying with all identified ARARs. No ARAR waivers have been sought or invoked for any component of the selected remedial action. The chemical- and action-specific and location-specific ARARs for the amended remedy at this Site include the following:

RESOURCE CONSERVATION AND RECOVERY ACT 40 U.S.C. § 6901 et seq.

RCRA regulations (40 CFR 261-263 and 268), and Oregon Administrative Rules (OAR) 340-100-108, address the requirements for defining, characterizing and listing hazardous wastes; for generators pertaining to manifesting, transporting, and recordkeeping; for transporters pertaining to shipment of hazardous wastes off-site; and, land disposal restrictions.

These regulations are applicable to the characterization and off-site disposal of contaminated waste from the Site.

RCRA Regulations 40 CFR Part 264 address Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. The construction of the OCF and consolidation of contaminated material in the OCF will occur within the area of contamination. The OCF is not considered a new unit. The following are relevant and appropriate to the construction of the OCF:

- * 40 CFR 264.18(a) and (b) standards for seismic considerations and floodplain design, construction, operation and maintenance to prevent washout.
- * Subpart F: Release From Solid Waste Management Units, 40 CFR 264.91 - 264.100 Groundwater monitoring requirements to establish a detection monitoring program (264.98), a compliance monitoring program (264.99) and corrective action monitoring program (264.100). All monitoring requirements must meet general groundwater monitoring requirements (264.97).
- * Subpart G: Closure and Post-closure, 40 CFR 264.111, Closure performance standard
40 CFR 264.114, Disposal and decontamination of equipment and structures
40 CFR 264.117, Post-closure monitoring
40 CFR 264.119, Post-closure notices
- * Subpart L: Waste Piles
40 CFR 264.251 Design and operating requirements
- * Subpart N: Landfills
40 CFR 264.301 Design and operating requirements to install two liners, a top liner that prevents waste migration into the liner, and a bottom liner that prevents waste migration through the liner. Install leachate collection systems above and between the liners. Construct run-on and run-off control systems capable of handling the peak discharge of the 25-year storm.
40 CFR 264.303 Monitoring and inspection requirements
40 CFR 264.310 Closure and post-closure care - Installation of final cover to provide long-term minimization of infiltration; 30 year or longer post closure care and monitoring requirements.

CLEAN AIR ACT 42 U.S.C. §§ 7401 et seq.

40 CFR Part 50 National ambient air quality standards for lead and particulate matter are applicable to the control of fugitive dust emissions during excavation and other field activities.

CLEAN WATER ACT 33 U.S.C. §§ 1251 et seq.

Clean Water Act regulates direct discharges to surface water (Section 301, technology based effluent limitations; 303, 304 federal water quality criteria), indirect discharges to publicly owned treatment works (Section 307, pretreatment), and discharges of dredge-and-fill materials into surface waters (including wetlands) (Section 404).

CWA Section 301 Requirements for Technology Based Effluent Limitations are applicable for direct discharges. Discharge limits for the Gould site will be set to meet the Willamette River water quality criteria for toxic pollutants (OAR 340-41-445)

CWA 303 and 304 Requirements for Federal Water Quality Criteria are substantive requirements that are relevant and appropriate for control of leachate from the OCF.

CWA 307 Regulations for Toxic and Pretreatment standards. Discharges to POTWs may be subject to specific local limits, which are established in City of Portland Code, Section 17. These requirements are applicable if leachate is discharged to the City sewer system.

CWA Section 402 Requires dischargers of pollutants from any point source into surface waters of the U.S. to meet certain requirements and obtain a NPDES permit. On-site discharges from a CERCLA site must meet the substantive NPDES requirements only. 40 CFR 122.26 describes requirements related to storm water discharges.

40 CFR Part 125, Subpart A, describes Criteria and Standards for Imposing Technology-based Treatment Requirements Under Sections 309(B) and 402 of the Act.

40 CFR Part 125 - Subpart K, Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act are applicable to control of releases of hazardous pollutants into surface waters during cleanup.

CWA Section 404 and ORS 196.800 to 196.990 contain requirements that pertain to dredging and filling of hydric soils and/or wetlands areas. Substantive requirements are applicable to the dredging and filling of the East Doane Lake remnant.

HAZARDOUS MATERIALS TRANSPORTATION ACT 49 U.S.C. Ap. §§ 1801 et seq.

49 CFR Parts 171-177 U.S. Dept. of Transportation-Subchapter C - Hazardous Materials Regulations are applicable to any off-site disposal of hazardous waste.

OTHER CRITERIA, GUIDANCE, AND STANDARDS TO BE CONSIDERED (TBCs)

The following guidance was also considered:

EPA's Revised Interim Soil Lead Guidance for CERCLA Sites and RCRA Corrective Action Facilities (Office of Solid Waste and Emergency Response [OSWER] Directive No. 9355.4-12; EPA 1994) establishes a residential "screening level" of 400 ppm, above which further study is warranted. A cleanup level of 1,000 ppm has been selected for this Site since this level is considered protective of on-Site workers, and the property comprising the Site is zoned industrial.

In addition, the Occupational Safety and Health Act (29 CFR Parts 19010 and 1926) must be adhered to as it addresses safety requirements for workers engaged in response or other hazardous waste operations.

Cost-Effectiveness:

The cost-effectiveness of each alternative was evaluated, including those which were screened out prior to the alternatives assessment in the Amended Remedy Document. The selected final operable unit remedial action is cost-effective as it affords overall effectiveness and protectiveness proportional to costs. Other remedial alternatives considered were found to be generally more costly without affording additional protectiveness commensurate with their cost.

Utilization of Permanent Solutions and Alternative Treatment Technologies or Resource Recovery Technologies to the Maximum Extent Practicable:

EPA and DEQ have determined that the selected remedial action represents the best balance of tradeoffs among the alternatives considered with respect to EPA's nine evaluation criteria. The remedy represents the maximum extent to which permanent solutions and treatment technologies can be utilized in a cost-effective manner. It is protective of human health and the environment, and complies with all applicable environmental regulations. This remedial action also utilizes treatment where feasible and practicable.

Preference for Treatment As a Principal Element:

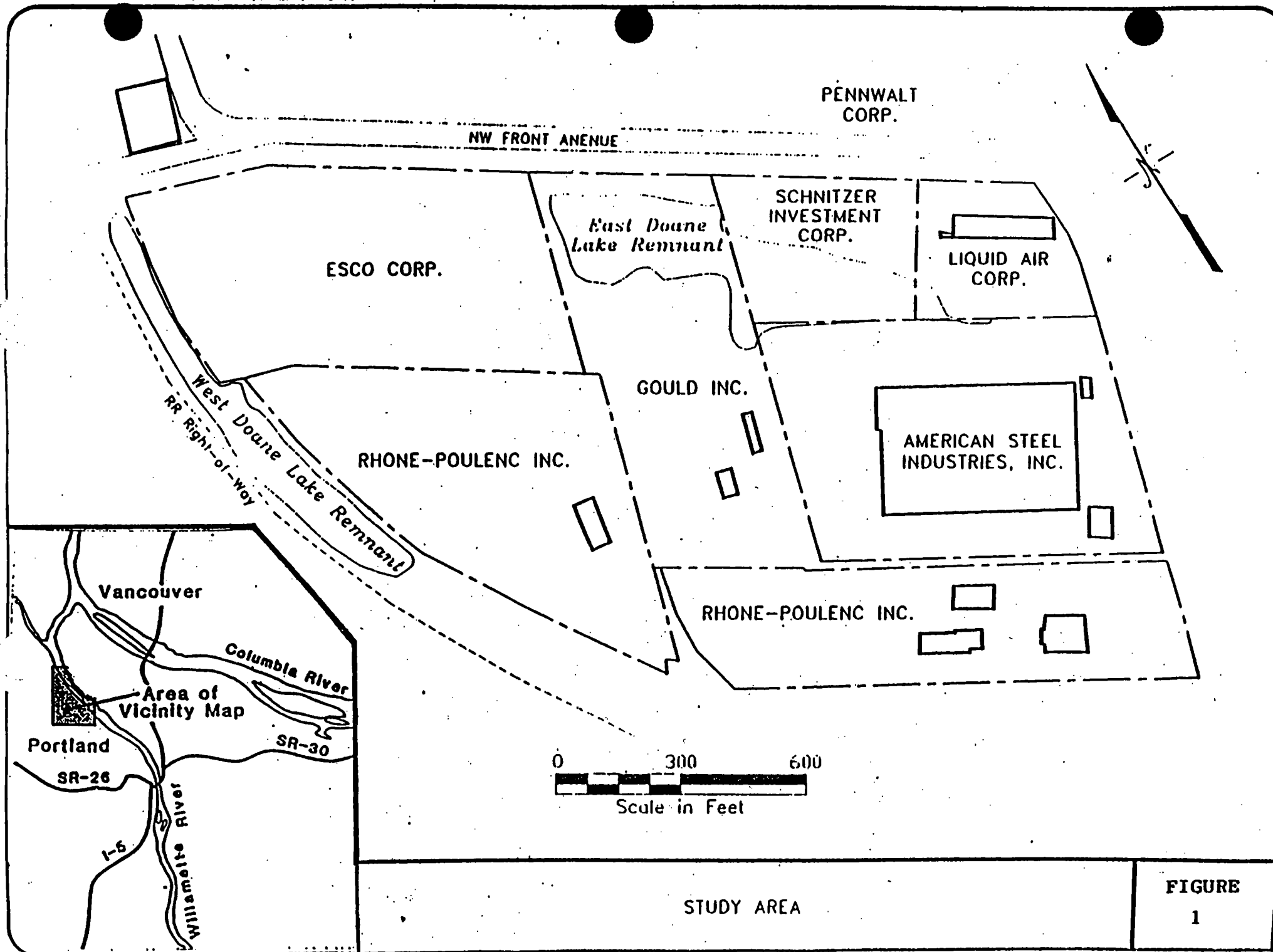
Significant quantities of hazardous substances have already been treated at this Site through partial implementation of the ROD.

Treatment of highly contaminated waste materials prior to on-site disposal and treatment of materials classified as hazardous waste prior to off-site disposal will be required; thus this remedy satisfies the statutory preference for treatment as a principal element. By treating the most highly contaminated soil and other waste material prior to disposal in the OCF or at an off-Site permitted landfill, the selected remedy satisfies the preference for treating the principal threat posed by the Site.

Documentation of Significant Changes

The Proposed Plan was released for public comment in April 1996. Comments received during the public comment period and EPA responses are summarized in the attached responsiveness summary. As noted in the responsiveness summary, EPA will address a number of the technical considerations in the comments during the remedial design phase.

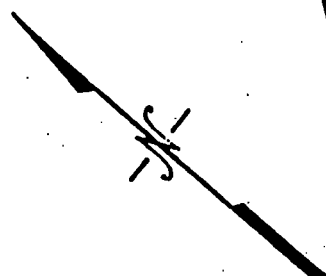
The Proposed Plan indicated that EPA will coordinate future cleanup determinations regarding battery casings and other contaminated materials located on the Rhone-Poulenc and ESCO property portions of the Site with DEQ. EPA has determined, in consultation with DEQ, that a final decision on the need for a soil cap or other remedial action to address subsurface lead contamination, including additional removal of subsurface soil and/or treatment, in the Lake Area should be deferred until after the following actions have been completed: 1) removal of treated and untreated Gould Site waste material currently stockpiled on the Rhone-Poulenc property, 2) confirmation sampling for lead, and 3) completion of a risk assessment for this area that includes organic constituents.



FIGURE

EXPLANATION

- S-33 Stockpile with designation
- B-8 Area of stabilized blocks with designation
- / Revised limits of battery casings 8/26/84



ESCO CORP. LOT 44

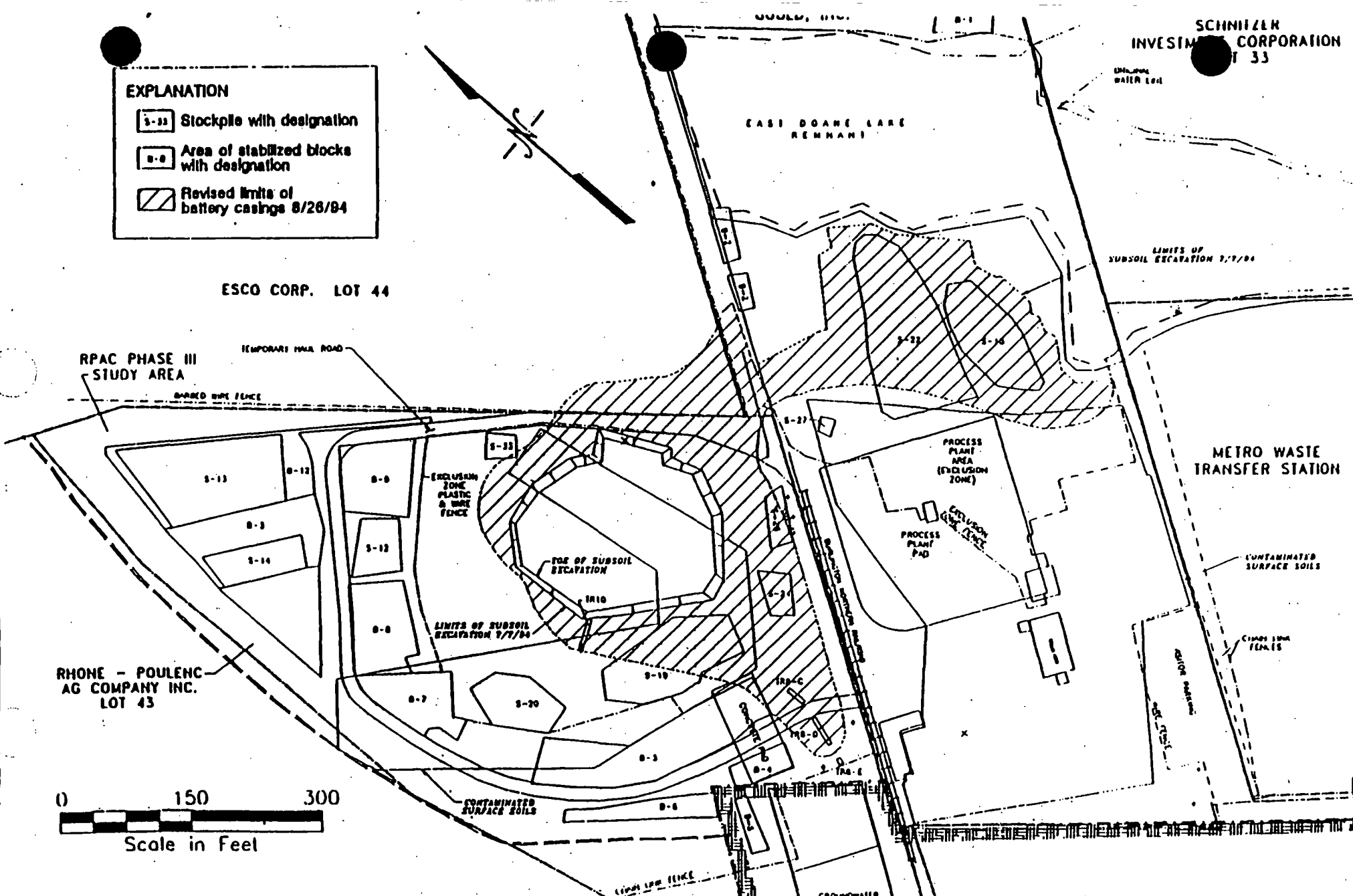
RPAC PHASE III
STUDY AREA

TEMPORARY HAUL ROAD

BARBED WIRE FENCE

RHONE - POULENC
AG COMPANY INC.
LOT 43

0 150 300
Scale in Feet

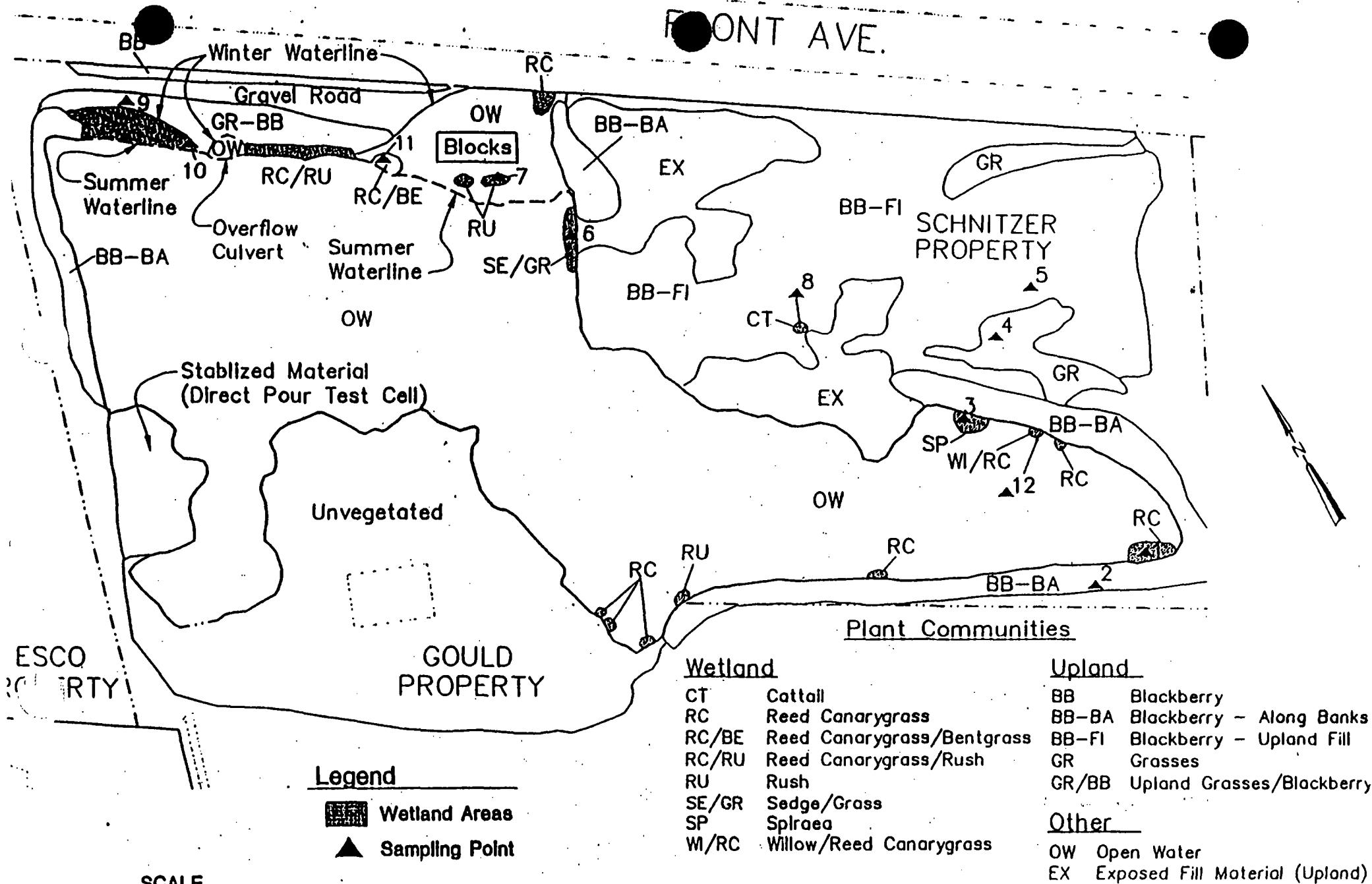


ENVIRON

A Division of APB
Environmental Sciences Group, Inc.

LEAD-IMPACTED AREAS
AND LOCATIONS OF STOCKPILES AND BLOCKS
GOULD SUPERFUND SITE - PORTLAND, OREGON

Figure
2



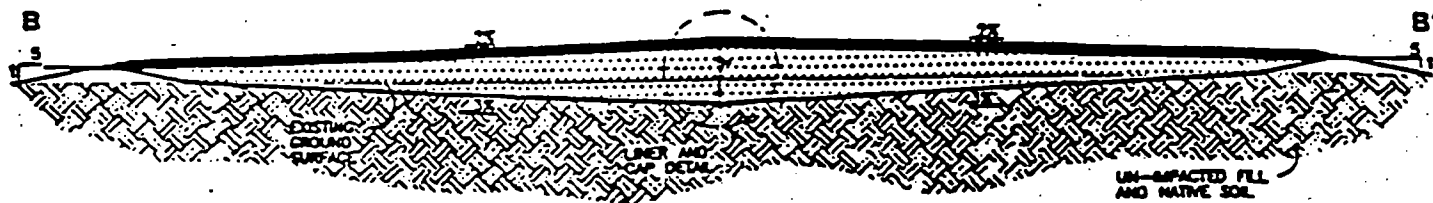
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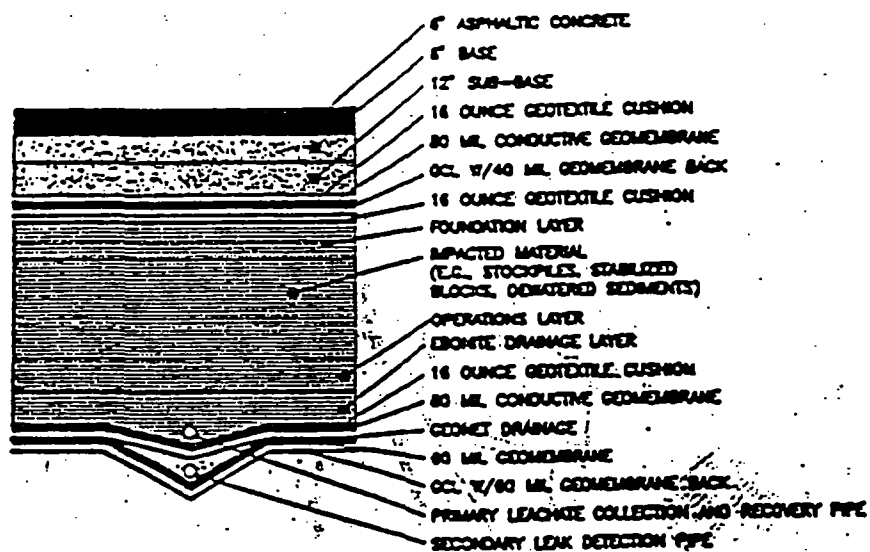
(IN FEET)

1 Inch = 100 ft.

Project # 985007NA	EAST DOANE LAKE WETLANDS INVESTIGATION		Figure 3
WOODWARD-CLYDE CONSULTANTS	Gould Superfund Site PRP Group Portland, Oregon	Map Showing Wetland Areas	

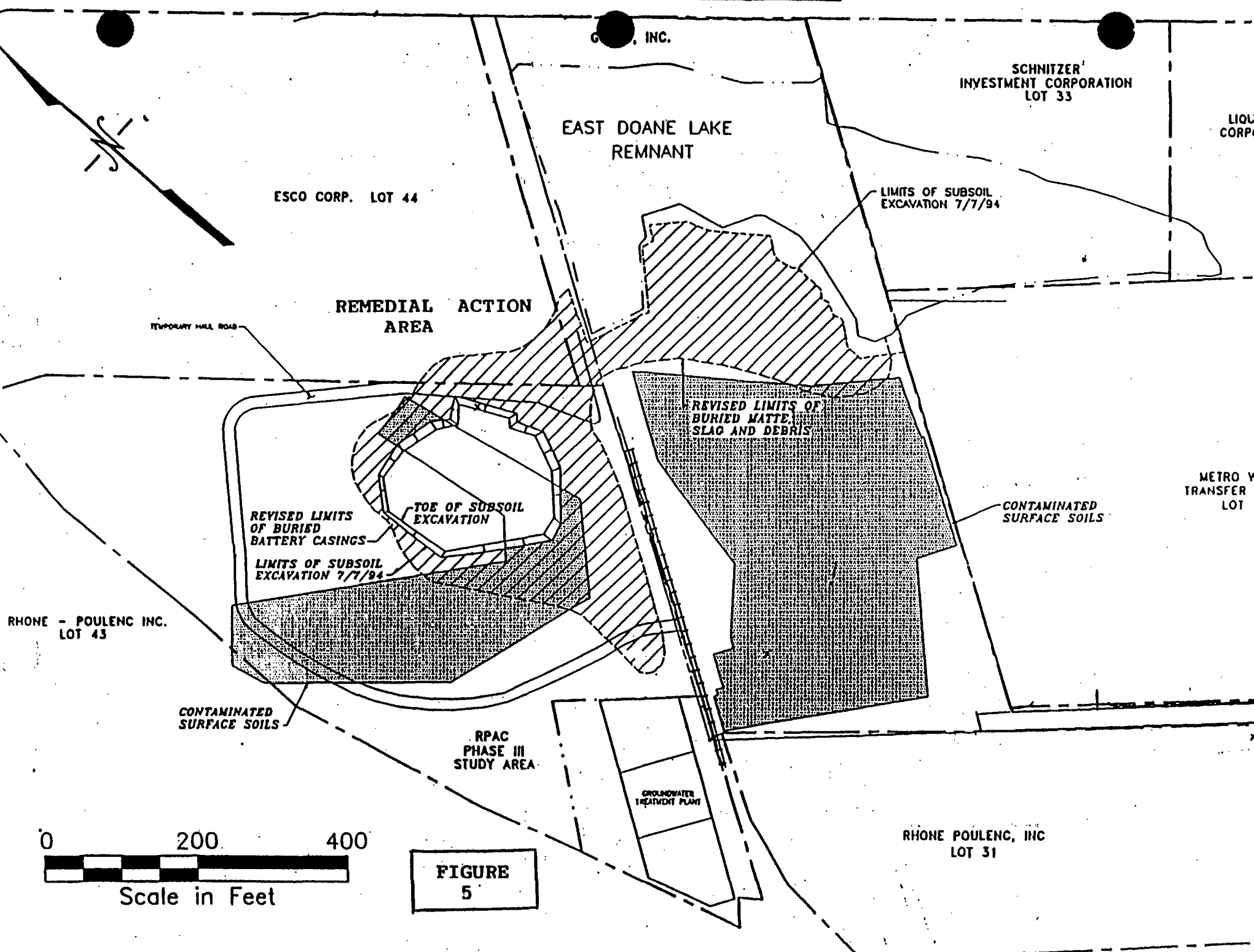


SCHEMATIC SECTION B-B'



LINER AND CAP DETAIL

Figure 4



APPENDIX A

Responsiveness Summary

**RESPONSIVENESS SUMMARY
GOULD SITE SOILS OPERABLE UNIT
AMENDED RECORD OF DECISION**

This responsiveness summary summarizes and responds to substantive comments received during the public comment period regarding United States Environmental Protection Agency's (EPA's) proposed cleanup plan for the Gould Superfund Site located in Portland, Oregon. The Proposed Plan was based on information in the administrative record for the ROD Amendment. The Administrative Record and the Proposed Plan are available for review at the Multnomah County Central Library in downtown Portland, Oregon and at EPA's offices in Seattle, Washington. Copies of the Proposed Plan were mailed to local citizens and other interest groups that were on a mailing list developed as part of the Community Relations Plan for this Site.

One comment letter was received during the public comment period. The comment letter and follow up responses from the Gould Site PRP Group and the commenter are in the Administrative Record for this Site.

Comments and Agency Responses

1) Zoning not addressed as an ARAR

Comment Commenter requested that Portland's Planning and Zoning requirements for siting of solid waste facilities be considered ARARs, and specifically identified 100 foot setback requirements contained in the Sections 33.254.080 and 33.254.090 of the Portland Planning and Zoning ordinance as ARARs for the construction of the On-Site Containment Facility (OCF). This portion of the Portland Planning and Zoning Ordinance regulates mining and waste-related uses.

Response In general, only federal and state laws or regulations are ARARs and local zoning ordinances are not ARARs. However, EPA, in this instance, agrees with the commenter that the Portland Planning and Zoning ordinance (the "Ordinance") setback requirements are relevant and appropriate. EPA's conclusion is based on two factors: (1) the Ordinance was promulgated pursuant to a State law, see Chapter 197 of the Oregon Revised Statutes; and (2) the Ordinance is enforceable by the State of Oregon, ORS 197.090. Nonetheless, EPA has determined that, under the Ordinance, the proposed setback requirement does not apply to the proposed cleanup action. The use of the existing area of lead contamination within the Site as a disposal area is a "grandfathered" non-conforming use under the Ordinance. Grandfathered non-conforming uses are not subject to the Ordinance's set back requirements. EPA has also concluded that, under the Ordinance, the disposal of hazardous substances in the

selected in the ROD Amendment. EPA will ensure that these requirements are met during the remedial design of the Amended Remedy.

3) Proposed plan not protective of adjoining landowners and increases the risk of liability of adjoining landowners.

Comment The proposed remedy is not protective of adjoining landowners and increases liability of adjoining landowners because contamination will be covered, future removal will be expensive and it forces the commenter to maintain property that contains known contamination. The commenter further suggests that the PRPs should purchase East Doane Lake area or require Rhone Poulenc to indemnify the commenter with respect to liability for RP organics on the commenter's property.

Response This comment raised three concerns. First, whether the Amended Remedy is protective of human health and the environment on properties outside of the disposal area. Second, whether there will be a need for further response actions if all sediment contamination in the area where the OCF will be constructed is not removed pursuant to the Amended Remedy. Third, whether the PRP group or Rhone-Poulenc should compensate for the commenter for RP organics on its property.

EPA believes that the Amended Remedy is protective of human health and the environment. The Amended Remedy protects adjoining landowners from Site contamination. The commenter's property includes areas that are within the area of contamination being addressed by this remedial action. The commenter's property is contaminated with hazardous substances associated with the Gould Site operations and other sources, including material disposed of by the commenter which contains hazardous substances. The proposed action will include excavation of contaminated sediments from the commenter's property and containment in a lined and capped containment facility located on the Gould property. The sediments that will be removed are contaminated with lead above specified cleanup levels. Organic contamination is commingled with the lead-contaminated sediments and will be removed from the commenter's property and placed in the OCF. Some sediments with low levels of organic contamination may not be removed. However, if such sediments are not removed, it will be after DEQ has determined that removal of such contamination is not necessary to protect human health or the environment. The Amended Remedy as implemented along with any State directed removal actions will substantially reduce or eliminate the potential for exposure to hazardous substances in this area.

The proposed plan for the Amended Remedy indicated that sediments removal will occur to a depth of between 1.5 to 2.0 feet (the depth may vary at individual locations). Rhone Poulenc is, pursuant to a consent agreement with DEQ, committed to evaluate the residual organic contamination in sediments below

as such in the Proposed Plan. EPA will require the PRP Group to conduct a detailed analysis as part of the preliminary design. The results of the analysis will be available to the public, including any adjacent property owners.

5) ROD improperly addresses organics

Comment EPA should clarify the nature of the portions of the proposed ROD Amendment that addresses organics. Conclusions are reached in the ARD about the handling and encapsulation of organics that appear to be beyond the scope of the RI/FS process. Where no characterization of the organics has occurred within the formalized RI/FS process, it is inappropriate for the proposed ROD Amendment to endorse remedies that involve the on-site disposal of some organics contaminated sediment and leaving in place of other contaminated sediments.

Response EPA has added language in ROD Amendment to clarify the handling of organics contaminated sediments.

EPA is not limited to the RI/FS process in reviewing post-ROD information. Agency guidance (OSWER Directive 9355.3-02) notes that after a ROD is signed, new information may be generated during the RD/RA process that could affect the remedy selected in the ROD. The original ROD for the Gould Soils Operable Unit was focused on remediation of lead contamination, which was identified as the primary contaminant of concern. Information regarding organics contamination has been generated since the ROD was signed in 1988. In addition to the characterization work conducted under the Rhone Poulenc RI/FS, additional data has been collected as part of the evaluation of the Gould Site remedial action. Information from the additional Gould Site studies was placed in the administrative record for the ROD Amendment.

Organic contaminants that are commingled with lead above previously established cleanup levels will be addressed by this ROD Amendment. EPA did not establish cleanup levels for organic contamination in the original ROD or as part of this ROD Amendment. EPA has determined that the onsite containment facility can be designed, constructed and operated to be protective of human health and the environment for the lead and organic contaminated materials that are being addressed by the ROD Amendment. DEQ will determine the levels that will be protective for organic contamination associated with the Rhone Poulenc facility, including areas on the Gould site not addressed by the ROD Amendment. DEQ anticipates making a determination on the remaining sediments prior to completion of remedial design.

6) Consolidation and settlement analysis

Comment The proposed plan fails to address consolidation and differential settlement. Substantial differences in settlement will occur between areas with indigenous cohesive soil and those

management system for the Gould site will be developed in the design phase of the project. The system will be designed to include adequate capacity to accommodate major storm events.

10) Impact of construction on neighbors

Comment Runoff could lead to additional contamination of neighboring property; and severe traffic problems likely during construction.

Response Control of runoff was a requirement of the original ROD and will be a design requirement for the OCF. There will undoubtedly be short term impacts, like increased traffic, on neighboring property during the construction. There is already a considerable amount of traffic in the vicinity of the site associated with nearby operating industries and the METRO waste transfer station. EPA will attempt to minimize direct impacts on adjoining landowners, although some short term impacts will be unavoidable because of space limitations and the need address contaminants on the commenter's property.

11) Handling of contaminated water

Comment Commenter expressed concern that the ROD doesn't address handling and disposal of contaminated water from dredging and dewatering sediment; and requested that EPA require the PRPs to address the means of treating the water prior to disposal to ensure no contamination of adjacent property.

Response EPA agrees with the commenter that handling and disposal of contaminated water from dredging and dewatering sediment needs to be addressed as noted in the proposed plan. EPA will require that the operation minimize short term impacts from dredging and construction to the extent practicable. Contaminated water from dewatering the sediments will be collected and treated as part of the remedial action.

12) Details and documentation

Comment The ARD lacks the specificity to comment on the proposal, and more comprehensive documentation must be developed and provided to the public to satisfy the public notice requirements.

Response The lack of specificity has been discussed in the responses to several of the previous comments. EPA acknowledges that the selected alternative as described in the ARD did not include specific details that are typically addressed as part of remedial design. Information developed during design will be made available to the commenter. EPA does not plan to conduct an additional public comment period during the design phase for this project, however. Commenters may submit information to EPA after the ROD Amendment is signed and EPA will review the information to determine if it should be considered by the agency. If EPA

APPENDIX B

**Letter of Concurrence from
The Oregon Department of Environmental Quality**

7

May 22, 1997

Mr. Chuck Clarke
Regional Administrator
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, WA 98102

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

Re: Gould Superfund Site
State Concurrence on the Amended
Record of Decision

Dear Mr. Clarke:

The Oregon Department of Environmental Quality (DEQ) has reviewed EPA's proposed Amended Record of Decision for the Soils Operable Unit of the Gould Superfund Site in Portland, Oregon. I am pleased to advise you that DEQ concurs with EPA's Amended Record of Decision.

I find that this decision is consistent with state statutory requirements and administrative rules pertaining to the degree of cleanup required and remedy selection process. Specifically, this decision is protective and balances effectiveness, implementability, implementation risk, long term reliability, and cost-reasonableness in accordance with ORS 465.315 and OAR 340-122-040 and 090.

The DEQ looks forward to the implementation of the remedial action. Please let us know if we can provide further assistance. The appropriate DEQ contact is Jill Kiernan at 530-229-6900.

Sincerely,


Langdon Marsh
Director

cc: Chip Humphrey, EPA/Oregon Operations Office
Jill Kiernan, DEQ



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APPENDIX C
Administrative Record Index

(GOADD) GOULD INC. - GOULD INC. - ROD AMENDMENT AR INDEX

HEADING: 0. 0. . . TABLE OF CONTENTS/INDEX

HEADING: 1. 0. . . GOULD REMEDIAL ADMINISTRATIVE RECORD

1. 0. . . V DOC ID: 40662

DATE: PAGES: 0

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Refer to the Gould Remedial Administrative Record located in the Superfund Region 10 Records Center and the Multnomah County Library for the 1988 Record of Decision and supporting documentation

HEADING: 3. 0. . . CASINGS/SOILS UNIT

SUB-HEAD: 3. 5. . . Vol. REVISED REMEDY REMEDIAL ACTION

SUB-HEAD: 3. 5. 1. . Vol. Correspondence

3. 5. 1. . V1028958 DOC ID: 40709

DATE: 11/19/93 PAGES: 2

AUTHOR(S): ADDRESSEE(S):

James F. Cronmiller/Gould Electronics Chip

Humphrey/EPA

DESCRIPTION: Letter expressing some concerns with the ongoing remedial efforts at the Gould Superfund Site

3. 5. 1. . V1028959 DOC ID: 40710

DATE: 1/14/94 PAGES: 5

AUTHOR(S): ADDRESSEE(S):

Steven Oster/Wilkie Farr & Gallagher Ted

Yackulic/EPA

DESCRIPTION: Request that EPA reconsider the remedial action at the Gould Superfund Site

3. 5. 1. . V1028960 DOC ID: 40711

DATE: 2/ 1/94 PAGES: 32

AUTHOR(S): ADDRESSEE(S):

Jay F. Young/NL Industries Chip

Humphrey/EPA

DESCRIPTION: Requested information regarding costs to complete remedial action, product recyclability and plant operation at the Gould Site

3. 5. 1. . V1028961 DOC ID: 40712

DATE: 3/21/94 PAGES: 2

AUTHOR(S): ADDRESSEE(S):

Mavis Kent/ODEQ

DESCRIPTION: Letter identifying DEQ general concerns with alternatives at the Rhone-Poulenc property and requesting consideration during the development of the alternatives

3. 5. 1. . V1028962 DOC ID: 40713

DATE: 3/30/94 PAGES: 2
AUTHOR(S): Chip Humphrey/EPA ADDRESSEE(S): Unknown
DESCRIPTION: Memorandum regarding the Gould Meeting on March 23, 1994
(written to File)

3. 5. 1. . V1028963 DOC ID: 40714
DATE: 7/ 7/94 PAGES: 19
AUTHOR(S): Jay F. Young/NL Industries ADDRESSEE(S): Chip
Humphrey/EPA
DESCRIPTION: Notification of Site Characterization Study and Temporary
Suspension of Stabilization Operations at the Gould Superfund Site

g stabi

3. 5. 1. . V1028964 DOC ID: 40715
DATE: 8/ 3/94 PAGES: 4
AUTHOR(S): Michael C. Veysey/Gould, Inc. ADDRESSEE(S): Ted Yackulic/EPA
DESCRIPTION: Letter expressing concern about continuin
activities at the Gould Superfund Site and requesting stabilization be
suspended pending selection of a final remedy

3. 5. 1. . V1028965 DOC ID: 40716
DATE: 11/ 7/94 PAGES: 13
AUTHOR(S): Chip Humphrey/EPA ADDRESSEE(S): Jay F.
Young/NL Industries
DESCRIPTION: Preliminary EPA and support agency comments on the draft
Focused Feasibility Study for the Gould Superfund Site

3. 5. 1. . V1028966 DOC ID: 40717
DATE: 12/15/94 PAGES: 5
AUTHOR(S): Mark E. Hawley/ENVIRON Corporation ADDRESSEE(S): Chip
Humphrey/EPA
DESCRIPTION: Response to comments received on the Focused Feasibility Study
that was submitted on September 30, 1994

3. 5. 1. . V1028967 DOC ID: 40718
DATE: 2/ 8/95 PAGES: 18
AUTHOR(S): Michael C. Veysey/Gould, Inc. ADDRESSEE(S): Ted Yackulic/EPA
DESCRIPTION: Response to 1/18/95 request that the Gould Site PRP Group
formally advise EPA of its position on the need to further coordinate remedial
action at the Gould Superfund Site with the ongoing RI/FS and remedial action
at the Rhone-Poulenc Site

3. 5. 1. . V1028968 DOC ID: 40719

DATE: 2/10/95 PAGES: 2
AUTHOR(S): David L. Blount/Copeland Landye Bennett & Wolf ADDRESSEE(S):
Humphrey/EPA Chip
Ted Yackulic/EPA
DESCRIPTION: Letter confirming that Canonie Environmental has terminated its
contract with the Gould site PRP Group

3. 5. 1. . V1028969 DOC ID: 40720
DATE: 2/10/95 PAGES: 1
AUTHOR(S): Robert B. Hopkins/Copeland Landye Bennett & Wolf ADDRESSEE(S):
Environmental Services Corp. Canonie
DESCRIPTION: Letter demanding that Canonie immediately leave the Gould site
due to inappropriate and unilateral conduct and contract breaches

3. 5. 1. . V1028970 DOC ID: 40721
DATE: 2/16/95 PAGES: 4
AUTHOR(S): Jay F. Young/NL Industries ADDRESSEE(S):
Humphrey/EPA Chip
Ted Yackulic/EPA
DESCRIPTION: Transmittal of a schedule for sampling the stabilized blocks at
the Gould Superfund Site and answers to various EPA questions regarding the
cost calculations in the Focused Feasibility Study

3. 5. 1. . V1028971 DOC ID: 40722
DATE: 12/21/95 PAGES: 6
AUTHOR(S): Chip Humphrey/EPA ADDRESSEE(S):
Young/NL Industries Jay F.
DESCRIPTION: EPA and supporting agency's comments on the Amended Remedy
Document for the Gould Superfund Site Soils Operable Unit

3. 5. 1. . V1050816 DOC ID: 68063
DATE: 3/ 7/96 PAGES: 14
AUTHOR(S): Mark E. Hawley/ENVIRON Corporation ADDRESSEE(S):
Humphrey/EPA Chip
DESCRIPTION: Letter on behalf of the Gould Superfund Site PRP Group in
support of the remedy proposed in the Amended Remedy Document submitted on
1/26/96.

3. 5. 1. . V1050817 DOC ID: 68064
DATE: 8/16/96 PAGES: 1
AUTHOR(S): Jill Kiernan/Oregon Dept. of Environmental Quality ADDRESSEE(S):
DESCRIPTION: Letter to preliminarily identify Oregon's applicable or
relevant and appropriate requirements (ARARs) for the EPA proposed Record of
Decision (ROD) Amendment.

SUB-HEAD: 3. 5. 2. . Vol. Sampling Plans/Work Plans

3. 5. 2. . V1028938 DOC ID: 40643
DATE: 6/15/95 PAGES: 100

AUTHOR(S): ENVIRON Corporation ADDRESSEE(S):
Superfund Site PRP Group Gould

DESCRIPTION: Sampling and Analysis Plan for Stage I Investigation of
Stockpiles, Stabilized Blocks, and Sediments, Gould Superfund Site, Portland,
Oregon

3. 5. 2. . V1028939 DOC ID: 40644
DATE: 12/ 4/95 PAGES: 16

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Sampling and Analysis Plan for Stage II Investigation of Lead
Fines and Matte Gould Superfund Site, Portland, Oregon

SUB-HEAD: 3. 5. 3. . Vol. Site Investigation Reports

3. 5. 3. . V1028942 DOC ID: 40645
DATE: 12/ 1/94 PAGES: 180

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Review of Organics Data Collected at the Gould Superfund Site,
Portland, Oregon

3. 5. 3. . V1028940 DOC ID: 40646
DATE: 3/31/95 PAGES: 28

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Site Condition Report, Gould Superfund Site, Portland, Oregon

3. 5. 3. . V1028937 DOC ID: 40647
DATE: 10/31/95 PAGES: 250

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Ground Water Monitoring Field Activities, February 1995 -
August 1995

3. 5. 3. . V1050818 DOC ID: 68065
DATE: 4/18/96 PAGES: 25

AUTHOR(S): ADDRESSEE(S):

Woodward-Clyde Consultants

DESCRIPTION: Wetlands Investigation of East Doane Lake, Final Report.

SUB-HEAD: 3. 5. 3. . Vol. Volume 2

3. 5. 3. . V1028941 DOC ID: 40648
DATE: 10/31/95 PAGES: 200

AUTHOR(S): ENVIRON Corporation ADDRESSEE(S):

DESCRIPTION: Stage I Field Activities Report, Gould Superfund Site,
Portland, Oregon

SUB-HEAD: 3. 5. 4. . Vol. Focused Feasibility Study

3. 5. 4. . V1028954 DOC ID: 40663
DATE: 9/30/94 PAGES: 89

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Focused Feasibility Study for the Gould Superfund Site,
Portland, Oregon, Volume I, Main Report, Tables, and Figures (Redacted Copy,
Business Confidential Information Removed)

3. 5. 4. . V1028955 DOC ID: 40664
DATE: 9/30/94 PAGES: 218

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Focused Feasibility Study for the Gould Superfund Site,
Portland, Oregon, Volume II, Appendices A and B [Redacted Copy, Business
Confidential Information (Appendix B) Removed]

3. 5. 4. . V1028956 DOC ID: 40665
DATE: 9/30/94 PAGES: 218

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Focused Feasibility Study for the Gould Superfund Site,
Portland, Oregon, Volume III, Appendices C through F [Redacted Copy, Business
Confidential Information (Appendices C, D & F) Removed]

SUB-HEAD: 3. 5. 5. . Vol. Amended Remedy Document

3. 5. 5. . V1028943 DOC ID: 40649
DATE: 1/26/96 PAGES: 300

AUTHOR(S): ADDRESSEE(S):

DESCRIPTION: Amended Remedy Document for the Gould Superfund Site, Portland,
Oregon

SUB-HEAD: 3. 5. 6. . Vol. Proposed ROD Amendment

3. 5. 6. . V1028977 DOC ID: 40784
DATE: 3/29/96 PAGES: 12
AUTHOR(S): ADDRESSSEE(S):
EPA Unknown
DESCRIPTION: Proposed ROD Amendment, Gould Superfund Site, Portland, Oregon

SUB-HEAD: 3. 5. 6. 1. Vol. Comments

3. 5. 6. 1. V1050819 DOC ID: 68066
DATE: 4/18/96 PAGES: 1
AUTHOR(S): ADDRESSSEE(S):
Tom Zelenka/Schnitzer Investment Corp. Chip
Humphrey/EPA
DESCRIPTION: Letter requesting an extension of the comment period for the
Gould Superfund Site Proposed ROD Amendment.

3. 5. 6. 1. V1050820 DOC ID: 68067
DATE: 5/31/96 PAGES: 19
AUTHOR(S): ADDRESSSEE(S):
DESCRIPTION: Comments on Gould Superfund Site Proposed ROD Amendment.

3. 5. 6. 1. V1050821 DOC ID: 68068
DATE: 6/28/96 PAGES: 12
AUTHOR(S): ADDRESSSEE(S):
Michael C. Veysey/Gould, Inc. Ted Yackulic/EPA
DESCRIPTION: Response to Schnitzer Investment Corporation's Comments on
Gould Superfund Site/Proposed ROD Amendment.

3. 5. 6. 1. V1050822 DOC ID: 68069
DATE: 7/23/96 PAGES: 7
AUTHOR(S): ADDRESSSEE(S):
Tom Zelenka/Schnitzer Investment Corp. Chip
Humphrey/EPA Ted Yackulic/EPA
DESCRIPTION: Letter responding to Gould's 6/28/96 letter and clarifying
Schnitzer's concerns about the proposed remedy.

HEADING: 8. 0. . . ENFORCEMENT
SUB-HEAD: 8. 1. . . Vol. Correspondence
SUB-HEAD: 8. 1. 1. . Vol. Unilateral Administrative Order

Correspondence

8. 1. 1. . V1028972 DOC ID: 40723
DATE: 5/24/94 PAGES: 3
AUTHOR(S): Carol A. Rushin/EPA ADDRESSEE(S): Michael C.
Veysey/Gould, Inc.
DESCRIPTION: Notice of Additional Response Actions Required Pursuant to
Administrative Order, In the Matter of the Gould Superfund Site, EPA Docket
No. 1091-01-10-106 ("Gould UAO")

8. 1. 1. . V1028973 DOC ID: 40724
DATE: 8/ 1/94 PAGES: 2
AUTHOR(S): Randall F. Smith/EPA ADDRESSEE(S): James E.
Benedict/Cable Huston Benedict & Ferris
DESCRIPTION: Notice and Directive for Performance of Additional Response
Actions Pursuant to Administrative Order, In the Matter of Gould Superfund
Site, EPA Docket No. 1091-01-10-106 (Gould UAO)

8. 1. 1. . V1028974 DOC ID: 40725
DATE: 8/17/94 PAGES: 2
AUTHOR(S): Ted Yackulic/EPA ADDRESSEE(S): Michael C.
Veysey/Gould, Inc.
DESCRIPTION: Letter expressing concern about Gould's August 3, 1994 letter
and the possibility that the Gould UAO Respondents may discontinue compliance
with the Gould UAO

8. 1. 1. . V1028975 DOC ID: 40726
DATE: 3/31/95 PAGES: 3
AUTHOR(S): Randall F. Smith/EPA ADDRESSEE(S):
DESCRIPTION: Notice of Additional Response Actions Pursuant to
Administrative Order, In the Matter of the Gould Superfund Site, EPA Docket
No. 1091-01-10-106 ("Gould UAO")

SUB-HEAD: 8. 3. . Vol. Administrative Orders

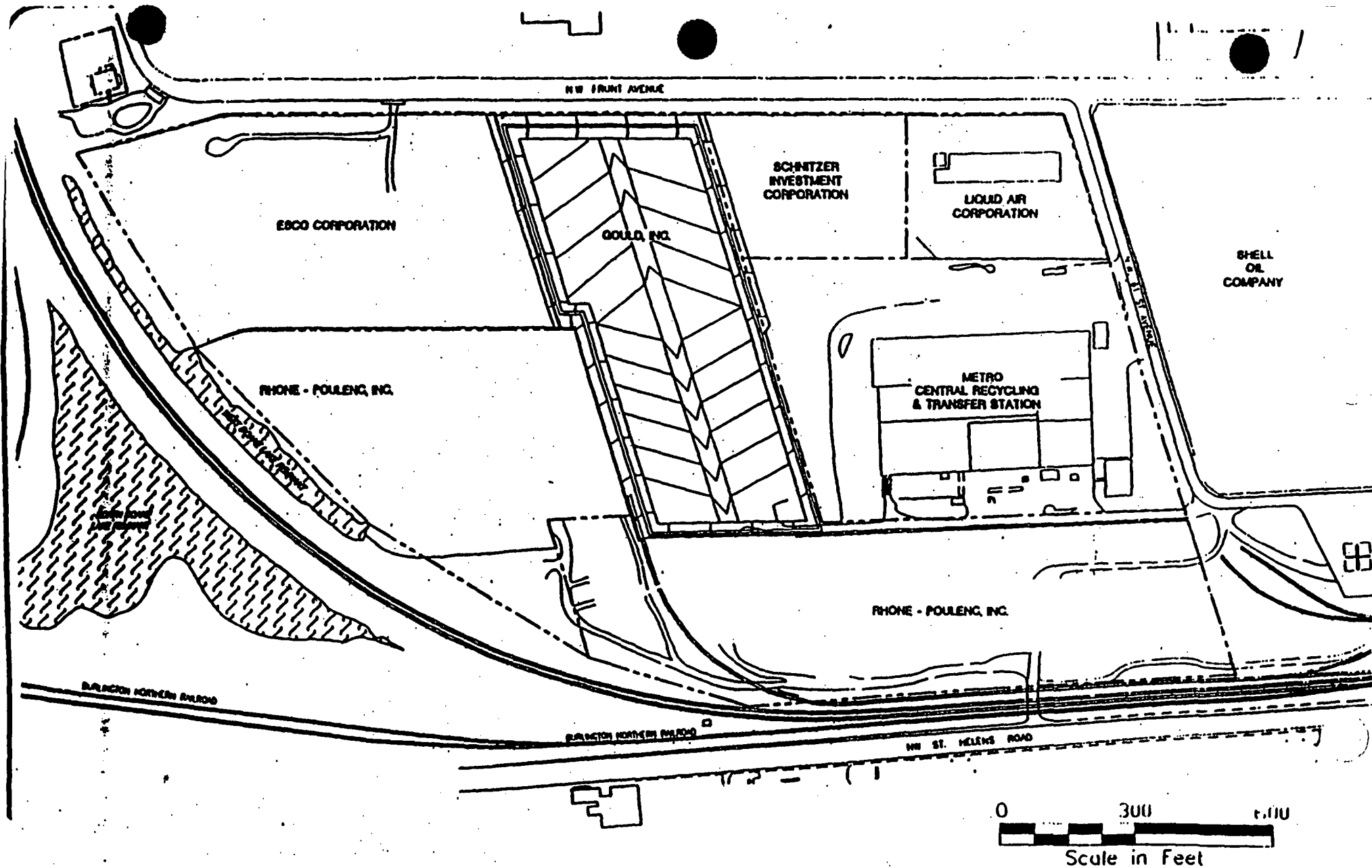
8. 3. . V1028944 DOC ID: 7389
DATE: 1/22/92 PAGES: 100
AUTHOR(S): ADDRESSEE(S):
Unknown
DESCRIPTION: Administrative Order, EPA Docket No 1091-01-10-106

APPENDIX D
Summary of Design Requirements

APPENDIX D

Summary of Design Requirements

PAGE	PARA	TEXT
12	3	<p>1) The design needs to provide for adequate control of water during the filling of the East Doane lake remnant, and monitoring and control of potential impacts from displacement of contaminants in East Doane lake water and sediments.</p> <p>2) The OCF must be designed to allow for implementation of future groundwater cleanup actions to be performed by Rhone-Poulenc as required by DEQ. This may reduce the area on the Gould property available for the on-site containment facility.</p> <p>3) The OCF must be designed to provide control of stormwater runoff and leachate.</p>
13	5	A mitigation/restoration plan will be required to compensate for the loss of the wetlands and open water habitat as part of the remedial action.
19	2	A detailed design phase will be required, however, to ensure that construction and operation of the OCF will be adequately protective. The design will include special considerations for dredging and filling of the East Doane lake remnant and handling of site materials.
20	3	Perform design studies to evaluate site constraints and design parameters, including the following: consolidation and settlement, lateral and vertical support, dewatering sediments, stormwater runoff and control, leachate collection, treatment and disposal, and hydrogeologic impact of filling East Doane lake remnant and the open excavation (also known as the Lake Area or Phase III Area) portion of the Rhone-Poulenc property;
21	1	A proposal identifying work to be performed, including at least one off-site mitigation proposal, shall be submitted with the final design report;
24	5	The OCF will be designed to meet minimum technology requirements for RCRA Subtitle C landfills, including liners, leachate collection, and a cap.



ENVIRON

A Division of APB
Environmental Sciences Group, Inc.

GOULD SUPERFUND SITE CONCEPTUAL ON-SITE CONTAINMENT FACILITY

Figure
6

**Gould Superfund Site
Amended ROD
Table 1**

Material	1988 ROD Quantity	Current Quantity Estimates	Estimated Quantity to be Placed in OCF*	Estimated Quantity to be Left in Place**
Gould site:				
Surface Soils	-	-	-	-
Casings	54,100	9,708	9,708	-
Matte/debris	6,000	33,451	9,181	22,400
Subsoil	9,580	6,133	3,000	3,000
R-P/ESCO				
Overburden	970	14,170	3,991	10,000
Casings	26,700	28,536	10,215	17,600
Bottom fill	-	725	25	700
Subsoils	6,470	5,927	3,370	2,400
East Doane Lake				
Sediments	5,500	5,483	5,483	-
Plastic	-	500	-	-
Totals:	109,320	104,633	44,390	56,100

*Note 1: the ARD document estimates 60,000 cubic yards of contaminated material would be placed in the OCF. The ARD estimates are higher than the total shown in this column because the ARD estimates include additional volume associated with the stabilized blocks and an estimated additional 5,000 cubic yards of contaminated surface material that will be scraped from the surface of the Site.

**Note 2: total does not include approximately 4,143 cubic yards of material that has been either: 1) treated and recycled, 2) disposed off-site or 3) treated and placed on-site

APPENDIX B GOULD REMEDIAL ACTION CONSENT DECREE

REMEDIAL ACTION
STATEMENT OF WORK
GOULD SUPERFUND SITE - SOILS OPERABLE UNIT

I. INTRODUCTION

A. PURPOSE OF THE STATEMENT OF WORK

The purpose of this Statement of Work (SOW) is to set forth the Settling Defendants' responsibilities in implementing the Remedial Action selected in the June 3, 1997 Record of Decision (ROD) for the Gould Superfund Site (Site), Soils Operable Unit. It shall be the responsibility of the "Settling Defendants" to prepare, submit for acceptance, and fully implement work plans for incorporating each element of this SOW. Settling Defendants means such Settling Defendants as are designated in the Consent Decree, to which this SOW is attached, as responsible for implementation of this SOW and/or any aspect thereof. It shall also be the responsibility of the Settling Defendants to ensure that all work undertaken is consistent with the National Contingency Plan (NCP), and conforms with the requirements specified in the Consent Decree to which this SOW is an appendix, this SOW, EPA's Superfund Remedial Design and Remedial Action Guidance, the ROD, Early Remedial Action Work Plan, Remedial Design Work Plan, the Remedial Action Work Plan, and any additional guidance provided by EPA.

B. DEFINITIONS

Terms used in this SOW which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Terms used in this SOW which are defined in section IV of the Consent Decree shall have the meaning assigned to them therein.

C. PERFORMANCE STANDARDS

The Settling Defendants are responsible for achieving all applicable Performance Standards, including, but not limited to, all cleanup standards, standards of control, quality criteria, and other substantive requirements, criteria, or limitations set

- * Excavation and dewatering of East Doane Lake sediments contaminated above RCRA characteristic hazardous waste levels;
- * Excavation of the remaining battery casings on the Gould property;
- * Treatment (stabilization or fixation) of the lead fines stockpile (S-15), the screened Gould excavation stockpile (S-22); and other lead contaminated material identified as principal threat waste;
- * Consolidating contaminated material, including sediments, treated and untreated stockpiled materials, casings, soil and debris in the lined and capped OCF;
- * Filling the East Doane Lake remnant and the open excavation in the Lake Area of the Rhone-Poulenc property;
- * Institutional controls, such as deed restrictions or environmental protection easements, which (1) provide EPA access for the purpose of evaluating the remedial action, and (2) limit future use of properties within the Site to industrial operations or other uses compatible with the protective level of cleanup achieved after implementation of the selected remedial action, and to uses which do not damage the OCF cap and liner system or cause releases of buried materials;
- * Performing groundwater monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; and
- * Long-term operation and maintenance requirements and reviews conducted no less often than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment.
- * The selected remedy will also allow off-site disposal of contaminated materials from the Gould site at regulated Subtitle D or Subtitle C disposal facilities.

The selected remedy described in the ROD deferred a cleanup decision on subsurface waste materials located on the

- D. On-site excavation of contaminated soils and sediments will be by conventional protective methods. During these activities, air monitoring will be conducted and dust suppressive measures will be utilized to control the release of dust and particulates. These measures will comply with the applicable federal Clean Air Act requirements (40 CFR Part 50) and Oregon Administrative Rules.
- E. Occupational Safety and Health Act (OSHA) requirements (29 CFR Part 1910 and 1926) pertain to workers engaged in response or other hazardous waste operations. Lead-contaminated soil excavation is considered a hazardous waste operation at this Site.
- F. Dredging and filling of the East Doane Lake remnant is subject to the requirements of Section 404 of the Clean Water Act, and 40 C.F.R. Part 230, Subpart H.
- G. The OCF shall be constructed above the water table and will be designed, constructed and operated to meet 40 CFR 264 Subpart N requirements for landfills, including: 1) § 264.301 design and operating requirements for liners and leachate collection systems, 2) § 264.303 monitoring and inspection requirements, 3) § 264.310 closure and post-closure care requirements for covers which minimize migration of liquids, function with minimum maintenance, and provide long-term integrity. 40 CFR 264 Subpart G, Closure and Post-Closure requirements are also relevant and appropriate requirements, specifically 1) § 264.111 closure performance standard, 2) § 264.114 disposal/decontamination requirements for soils, equipment, and structures, and 3) § 264.117 post-closure care and use of property.
- H. Stormwater runoff and leachate collected from the OCF will be managed in accordance with requirements of the Clean Water Act and Oregon Administrative Rules.
- I. Settling Defendants shall take necessary security at the Site to prevent access and vandalism. Warning signs shall be posted along the fence and at all gates, advising that the area is hazardous due to chemicals in the soils which pose a risk to public health through

criteria, plans, and specifications are understood and to review material and equipment storage locations.

The preconstruction inspection and meeting shall be documented by a designated person and minutes shall be transmitted to all parties.

2. Prefinal inspection:

Within 20 days after Settling Defendants make preliminary determinations that construction is complete, the Settling Defendants shall notify U.S. EPA and the State for the purposes of conducting an Early Remedial Action prefinal inspection. The prefinal inspection shall consist of a walk-through inspection of the entire Facility with U.S. EPA. The inspection is to determine whether the project is complete and consistent with the contract documents and the Early Remedial Action Work Plan. Any outstanding construction items discovered during the inspection shall be identified and noted. The prefinal inspection report shall outline the outstanding construction items, actions required to resolve items, completion date for these items, and a proposed date for final inspection.

V. REMEDIAL ACTION SCOPE OF WORK

A. REMEDIAL ACTION WORK PLAN

Settling Defendants shall submit a Remedial Action Work Plan which, in addition to the information required by the Consent Decree, at a minimum, shall contain the following:

1. Step-by-step description of each phase of the actions and field operations to be undertaken to perform the Remedial Action;
2. Identification of all management and supervisory personnel involved in the Remedial Action, together with descriptions of their duties, lines of authority, and respective roles and relationships, including, but not limited to such information relating to the Project Coordinator, Resident Engineer, Independent Quality

Upon completion of all outstanding construction items, the Settling Defendants shall notify EPA for the purpose of conducting a final pre-certification inspection. The final inspection shall consist of a walk-through inspection of the entire project site. The pre-certification inspection report shall be used as a check list with the final inspection focusing on the outstanding construction items identified in the pre-certification inspection. All tests that were originally unsatisfactory shall be conducted again. Confirmation shall be made during the final inspection that all outstanding items have been resolved. Any outstanding construction items discovered during the inspection still requiring correction shall be identified and noted. If any items are still unresolved, the inspection shall be considered to be a prefinal inspection requiring a prefinal inspection report and subsequent final inspection.

E. O&M PLAN

Within thirty (30) days of the Pre-Certification Inspection, the Settling Defendants shall submit an updated draft O & M Plan incorporating any necessary changes to the draft O&M Plan based on construction.

F. REPORTS

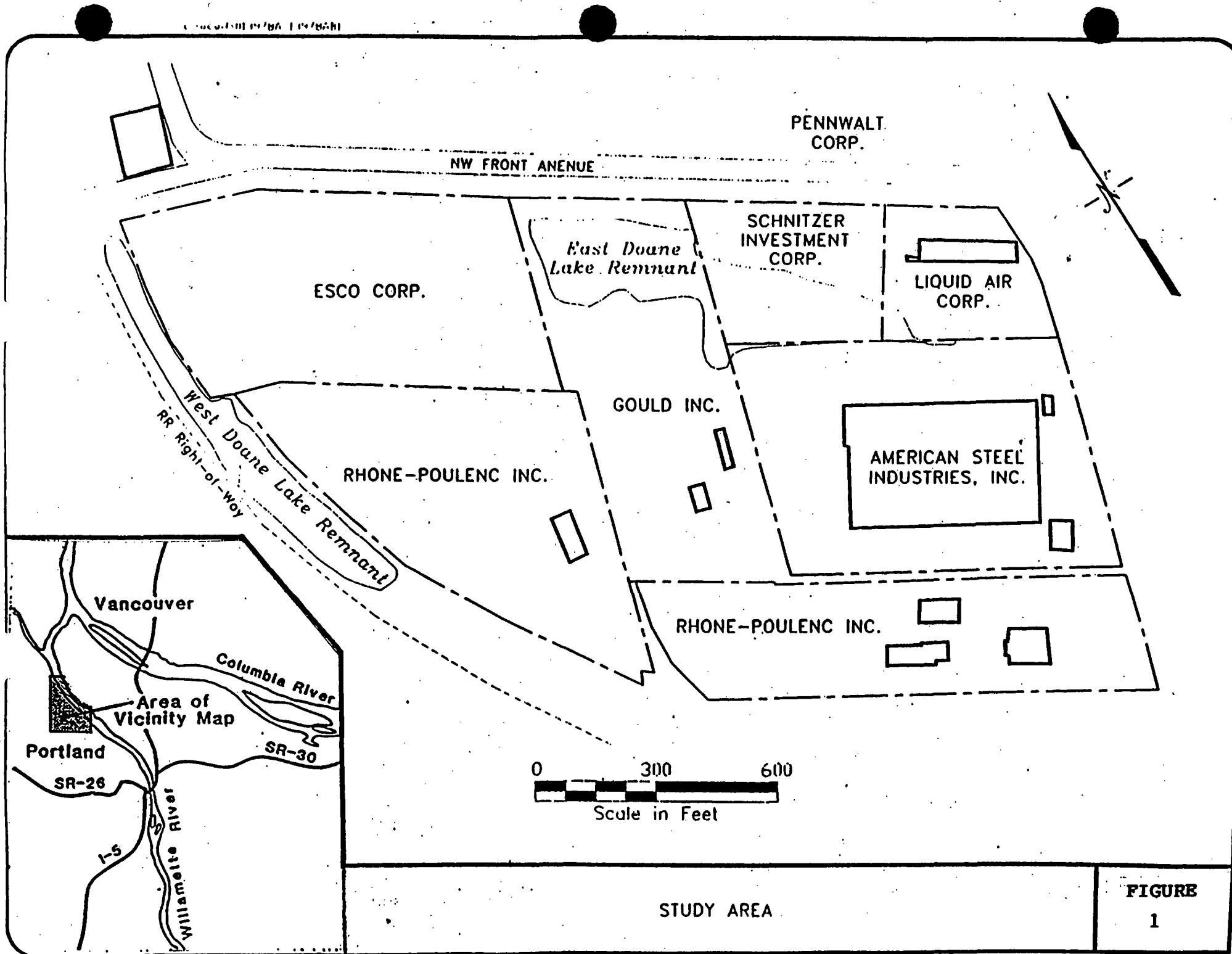
1. General Requirement:

All reports submitted pursuant to the Consent Decree and this SOW shall include a certification by the Project Coordinator that the information contained therein is complete and accurate.

2. Completion of Remedial Action Report:

In order to obtain EPA certification of completion of the Remedial Action, Settling Defendants shall submit a report documenting that the project is consistent with design specifications, and that all Remedial Action has been completed. In addition to the information required by the Consent Decree, the report shall include, but not be limited to, the following items:

APPENDIX C GOULD REMEDIAL ACTION CONSENT DECREE



APPENDIX D GOULD REMEDIAL ACTION CONSENT DECREE

EXHIBIT D
TO GOULD REMEDIAL ACTION CONSENT DECREE

Recordation requested by
and
after recordation return to:

Insert Grantor and Grantee
Contacts

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants ("Easement") is made this ___ day of _____, 19 __, by and between (INSERT NAME AND ADDRESS OF OWNER SETTLING DEFENDANT), ("Grantor"), on the one hand, and GOULD ELECTRONICS INC. ("Gould"), an Ohio corporation having an address of 34929 Curtis Blvd., Eastlake, Ohio 44095-4001, and the UNITED STATES OF AMERICA and its assigns, ("Grantee"), having an address of ___[c/o EPA, etc]___, on the other hand (collectively, "grantees").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the county of Multnomah, State of Oregon, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

WHEREAS, Gould is the owner of a parcel of land located in the county of Multnomah, State of Oregon, more particularly described on **Exhibit B** attached hereto and made part hereof (the "Gould Property"); and

WHEREAS, a portion of the Property is part of the Gould Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix

B, by publication in the Federal Register on September 8, 1983; and

WHEREAS, in a Record of Decision dated June 3, 1997 (the "ROD"), the EPA Region 10 Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

Construction of a lined and capped on-site containment facility ("OCF"), which has a leachate collection system; excavation and dewatering of East Doane Lake sediments contaminated above specified cleanup levels; excavation of battery cases on the Gould Property and East Doane Lake; treatment of lead fines, stockpiled materials and other lead contaminated material identified as principal threat waste; consolidation of contaminated material in the lined and capped OCF; filling of the East Doane Lake remnant and the open excavation in the lake area on the adjacent Rhone-Poulenc property; imposition of institutional controls; performance of groundwater monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; long term operation and maintenance requirements; and reviews conducted no less than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment; and

WHEREAS, the ROD selected a remedial action for the soils operable unit of the Gould Site. Remediation of groundwater contamination was not included in the ROD, and may in the future be undertaken as an additional response action at and near the Site under federal or state authority; and

WHEREAS, Gould, Grantor and other respondents to EPA's administrative orders issued in the Matter of Gould Superfund Site, EPA Docket No. 1091-01-10-106, issued on January 22, 1992 and July 8, 1997, are currently in the process of completing remedial design and remedy implementation at the Site; and

WHEREAS, Gould, Grantor and other respondents to EPA's administrative orders are currently negotiating with EPA the terms of a Consent Decree to be issued in a case to be captioned *United States of America v. NL Industries, Inc., Gould Electronics Inc.* which will be filed in the United States District Court for the District of Oregon (the "Consent Decree"); and

WHEREAS, the parties hereto have agreed that it is appropriate and necessary (1) to grant a permanent right of access over the Property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and (2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant. Grantor, on behalf of itself, and its successors and assigns in interest in the Property, in consideration of EPA's agreement to release Grantor from the First Amendment to Administrative Order, In the Matter of the Gould Superfund Site, Soils Unit, Portland, Oregon, EPA Docket No. 1091-01-10-106, [insert the following, if appropriate: "and in consideration of the releases and indemnities provided by Gould in the Settlement Agreement by and between Gould and certain other settling parties dated (the "Settlement")"], does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the United States of America and Gould, and their assigns, with general warranties of title, (1) the perpetual right to enforce said use restrictions, and (2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

2. Purpose. It is the purpose of this instrument to give the Grantees the right to remediate past environmental contamination and reduce the risk of exposure to contaminants for human health and the environment.

3. Restrictions on use. The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

a. The Property shall not be used for a residential or agricultural use (which is not intended to prohibit commercial scale recycling or composting activities).

b. There shall be no actions undertaken on the Property that may disturb or damage or otherwise interfere with the structural integrity of the OCF being constructed on the Gould Property, the OCF cap, the OCF liner, the OCF leachate collection system, the OCF detection monitoring system, or any other remedial actions that provide containment of hazardous substances, pollutants or contaminants or the ability to monitor such containment undertaken pursuant to the ROD.

c. The Property shall not be used for any commercial uses, as defined in the City of Portland Zoning Code, unless EPA determines in writing that such use is compatible with the protective level of cleanup that is achieved on that portion of the Property after implementation of the ROD.

These restrictive covenants, conditions, and restrictions touch and concern the Property, the Gould Property and the easement granted in paragraph 5 hereof. They are intended to impose an equitable servitude upon the Property for the benefit of the Gould Property, and the easement granted in paragraph 5 hereof. They shall run with the Property and inure to the benefit of all parties having or acquiring any fee interest in the Gould Property or in any part thereof and all parties having or acquiring any interest in the easement granted in paragraph 5 hereof.

4. Modification of Restrictions. The above restrictions and the easement rights granted below may be modified, or terminated in whole or in part, in writing, by the United States (as to it) or Gould (as to it) or both. However, Gould shall not modify or terminate its rights under this Easement without the consent of EPA so long as it is obligated to perform under the Consent Decree. Gould's termination or modification of its rights under this Easement shall not affect the rights and interest of Grantee United States and its assignees under this Easement. If requested by the Grantor, such writing will be executed by the United States or Gould in recordable form. Grantee Gould agrees that, if EPA or such governmental entity as may succeed to its authority has agreed with the Grantor to such a modification or termination, Grantee Gould will agree in writing, in a recordable form, to such modification or termination. During such time as the Consent Decree remains in effect, if Grantor requests that the United States modify or terminate a restriction or easement right and the United States declines to do so, Grantor may invoke and shall be subject to such Dispute Resolution procedures as exist under the Consent Decree.

5. Environmental Protection Easement.

a. Grant of Easement. Grantor hereby grants separately to each Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property. The purposes for such access are:

- (1) Monitoring the activities that any settling defendant under the Consent Decree or respondents under an administrative order are required by the United States to perform in implementation of the ROD;
- (2) Verifying any data or information submitted to the United States or to the state of Oregon;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for planning, monitoring, or implementing additional response actions at or near the Site;
- (6) Implementing the Remedial Action;
- (7) Determining whether the Site or other Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by this document, a consent decree or an administrative order issued by the United States;
- (8) Performing or overseeing the performance of monitoring actions or other response actions as defined by CERCLA section 101(25), 42 U.S.C. § 9601(25), on the Property which are required to be carried out during the Operations & Maintenance phase to be

implemented after completion of the Remedial Action; and

(9) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations, and performing or overseeing the performance of any response actions called for by such periodic reviews.

b. Duration of Easement. Access granted under this paragraph expires pursuant to the following terms:

- (1) Access to Grantee United States for the purposes set forth in subparagraphs 5.a.(1) through (6) shall expire when EPA, or such governmental entity as may succeed to its authority, certifies that the Remedial Action has been completed.
- (2) Access to Grantee United States for the purposes set forth in subparagraphs 5.a.(7), (8) and (9) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Work has been completed.
- (3) Access to Grantee Gould for the purposes set forth in subparagraphs 5.a.(1) through (6) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Remedial Action is complete.
- (4) Access to Grantee Gould for the purposes set forth in subparagraphs 5.a.(7) through (9) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Work is complete.

6. Reserved Rights of Grantor. Grantor hereby reserves unto itself and its successors and assigns in interest in the Property all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein. [if appropriate add "Grantees acknowledge that the development and use of the Property for warehouse or other industrial use as described generally on the Site Plans attached as Exhibit C has been found by EPA to be compatible with the remedial action and is specifically permitted. The parties hereto acknowledge that Grantor intends to proceed with the development of the Property. Prior to the initiation of any field activities on the Property by either Grantor or Grantee Gould other than site visits or site inspections, such party shall provide to the other party general notice of its plans. At such point as excavation or construction is planned, the party planning such activity shall provide detailed construction plans and a proposed construction schedule to the other. Grantor and Grantee Gould agree to cooperate and consult in matters of scheduling and logistics to permit Grantees' exercise of their rights under the Easement and Grantor's development of the Property to proceed. Specifically, until the Remedial Action is completed, whenever Grantor plans an activity that could be reasonably likely to interfere with

Grantees' access, at Grantee Gould or Grantor's request, a telephone conference or meeting shall be held to find a mutually satisfactory schedule for such activities. In the event that Grantor and Grantee Gould cannot find a mutually satisfactory schedule or agreement on the scope of the activities that Grantor can perform, the EPA Project Coordinator will meet with the parties and will determine what work proceeds and on what schedule. The decision of the EPA Project Coordinator shall be final and not subject to review. Grantor and Grantee Gould agree that they will not request excessive telephone conferences or meetings under this paragraph."]

7. Nothing in this document shall limit or otherwise affect EPA's or its assignees rights of entry and access provided by law or regulation.

8. No Public Access and Use. No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9. Notice Requirement. Grantor agrees, so long as any restriction established by paragraph 3 above or easement granted by paragraph 5 above remains in effect, to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 19 ___, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 19 ___, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA AND ITS ASSIGNS.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee United States with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

10. Administrative Jurisdiction. The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. The Regional Administrator of EPA Region 10 shall exercise the discretion and authority granted to the United States herein. If the United States assigns its interest(s) created by this instrument, unless it provides otherwise in any such assignment document, the discretion and authority referred to in this paragraph shall also be assigned. In addition, after assignment of the interests created herein, the assignee of the United States shall receive any and all interests and rights granted to the United States in this document.

11. Enforcement. Either Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All reasonable costs and expenses of the Grantees, including, but not limited to, attorneys' fees, incurred in any such enforcement action, to the extent Grantees have prevailed, shall be borne by the Grantor or its successors in

interest to the Property. In no event shall Grantee United States or its assigns pay attorney fees, nor shall Grantee Gould pay a share of attorney fees otherwise properly solely allocable to Grantee United States. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of either Grantee, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by either grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of either Grantee under this instrument.

12. Damages. Each Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

13. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Covenants. Grantor hereby covenants to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, except those noted on **Exhibit D** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

15. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee Gould:

To Grantee United States:

16. General Provisions.

a. Controlling Law. The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of Oregon, where the property is located. To the extent not otherwise specifically defined in this document, any capitalized term shall bear the meaning given to it in the Consent Decree.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provision of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein. [if appropriate insert reference to private party settlement]

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g. Successors. The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and upon successors and assigns in interest in the Property (including the easement granted in paragraph 5 above) and successors and assigns in interest in the Gould Property and shall continue as a servitude running in perpetuity with the Property for the benefit of the Gould Property and the easement granted pursuant to paragraph 5 above. The term "Grantor" wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and the successors and assigns in the interest of the Property, and heirs and personal representatives thereof. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the United States of America, and its designated representatives, and any assignee in the United States' interest in the easement granted in paragraph 5 above, and its designated representatives. The United States covenants

that it will only assign such interest to the State of Oregon or a subdivision thereof. The term "Grantee" whenever used herein, and any pronouns used in place thereof, shall also mean Gould and the successors and assigns in interest in the Gould Property, and heirs and personal representatives thereof. The rights of the Grantee Gould and Grantor under this instrument are freely assignable only to any person or entity that acquires an interest in the Gould Property or the Property, respectively, subject to the notice provisions hereof.

h. Termination of Rights and Obligations. A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this ____ Day of _____, 19__.

[INSERT GRANTEE'S NAME]

By: _____

Its: _____

STATE OF OREGON)

)

)

ss.

)

County of)

This instrument was acknowledge before me on _____, 19 __, by _____
_____, as _____ Of _____, a(n) corporation,

Notary Public for Oregon.

////

////

This easement is accepted this ____ day of _____, 19 __.

Executed this ____ day of _____, 19 __.

GOULD ELECTRONICS INC.

By: _____

Its: _____

STATE OF OHIO

)
)
) ss.
)
)

County of _____

Before me, a notary public, in and for said, county, personally appeared _____, known to me to be the person who, as _____ of GOULD ELECTRONICS INC., executed the foregoing instrument, signed the same, and acknowledged to me that ___ did so sign said instrument in the name and on behalf of the corporation as _____; that the same is _____ free act and deed as _____, and the free and corporate act and deed of said corporation, and ___ is duly authorized to sign said instrument

SUBSCRIBED AND SWORN to before me this ___ day of _____, 1997.

Notary Public for Ohio

My commission expires: _____

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This easement is accepted this ____ day of _____, 19 ____.

UNITED STATES OF AMERICA

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: _____

STATE OF WASHINGTON)

)

)

ss.

)

County of _____)

This instrument was acknowledged before me on _____, 19 ____, by _____
_____, as _____ of _____ A(n) corporation.

Notary Public for Washington

Attachments: Exhibit A - legal description of the Property
Exhibit B - legal description of Gould Property

APPENDIX E GOULD REMEDIAL ACTION CONSENT DECREE

EXHIBIT E

TO GOULD REMEDIAL ACTION CONSENT DECREE

Recordation requested by)
and)
after recordation return to:)
)
Stoel Rives LLP)
Attention: Joan P. Snyder)
900 SW Fifth Avenue,)
Suite 2300)
Portland, OR 97204-1268)
)
)

(Space reserved for Recorder's use)

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

This Environmental Protection Easement and Declaration of Restrictive Covenants ("Easement") is made this ____ Day of _____, 19 __, by and between **SCHNITZER INVESTMENT CORP. ("Grantor")**, an Oregon Corporation, having an address of 3200 NW Yeon Avenue, PO Box 10047, Portland, Oregon 97210, on the one hand, and **GOULD ELECTRONICS INC. ("GOULD")**, an Ohio Corporation having an address of 34929 Curtis Blvd., Eastlake, Ohio 4095-4001, and the **UNITED STATES OF AMERICA** and its assigns, ("Grantee"), having an address of [c/o EPA, etc.], on the other hand (collectively "Grantees").

WITNESSETH:

WHEREAS, Grantor is the owner of a parcel of land located in the county of Multnomah, State of Oregon, more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Property"); and

WHEREAS, Gould is the owner of a parcel of land located in the county of Multnomah, State of Oregon, more particularly described on **Exhibit B** attached hereto and made a part hereof (the "Gould Property"); and

WHEREAS, a portion of the Property is part of the Gould Superfund Site ("Site"), which

the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983; and

WHEREAS, in a Record of Decision dated June 3, 1997 (the "ROD"), the EPA Region 10 Regional Administrator selected a "remedial action" for the Site, which provides, in part, for the following actions:

Construction of a lined and capped on-site containment facility ("OCF"), which has a leachate collection system; excavation and dewatering of East Doane Lake sediments contaminated above specified cleanup levels; excavation of battery cases on the Gould Property and East Doane Lake; treatment of lead fines, stockpiled materials and other lead contaminated material identified as principal threat waste; consolidation of contaminated material in the lined and capped OCF; filling of the East Doane Lake remnant and the open excavation in the lake area on the adjacent Rhone-Poulenc property; imposition of institutional controls; performance of ground water monitoring to ensure the effectiveness of the cleanup and that contaminants were not mobilized during its implementation; long term operation and maintenance requirements; and reviews conducted no less than every five (5) years to ensure the remedy continues to provide adequate protection of human health and the environment; and

WHEREAS, the ROD selected a remedial action for the soils operable unit of the Gould Site. Remediation of groundwater contamination was not included in the ROD, and may in the future be undertaken as an additional response action at and near the Site under federal or state authority; and

WHEREAS, Gould, Grantor and other respondents to EPA's administrative orders issued in the Matter of Gould Superfund Site, EPA Docket No. 1091-01-10-106, issued on January 22, 1992 and July 8, 1997 are currently in the process of completing remedial design and remedy implementation at the Site; and

WHEREAS, Gould, Grantor and other respondents to EPA's administrative orders are currently negotiating with EPA the terms of a Consent Decree to be issued in a case to be captioned *United States of America v. NL Industries, Inc., Gould Electronics Inc, et al.*, which will be filed in the United States District Court for the District of Oregon (the "Consent Decree"); and

WHEREAS, the parties hereto have agreed that it is appropriate and necessary (1) to grant a permanent right of access over the property to the Grantees for purposes of implementing, facilitating and monitoring the remedial action; and (2) to impose on the Property use restrictions as covenants that will run with the land for the purpose of protecting human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantees in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant. Grantor, on behalf of itself, and its successors and assigns in interest in the Property, in consideration of EPA's agreement to release Grantor from the First Amendment to Administrative Order, In the Matter of the Gould Superfund Site, Soils Unit, Portland, Oregon, EPA Docket No. 1091-01-10-106, and in consideration of the releases and indemnities provided by Gould in the Settlement Agreement by and between Gould and certain other settling parties dated October 22, 1997 ("Gould/Schnitzer Settlement"), does hereby covenant and declare that the property shall be subject to the restrictions of use set forth below, and does give, grant and convey to the United States of America and Gould, and their assigns, with general warranties of title, (1) the perpetual right to enforce said use restrictions, and (2) an environmental protection easement of the nature and character, and for the purpose hereinafter set forth, with respect to the Property.

2. Purpose. It is the purpose of this instrument to give the Grantees the right to remediate past environmental contamination and reduce the risk of exposure to contaminants for human health and the environment.

3. Restrictions on Use. The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

a. The Property shall not be used for a residential or agricultural use (which is not intended to prohibit commercial scale recycling or composting activities).

b. There shall be no actions undertaken on the Property that may disturb or damage or otherwise interfere with the structural integrity of the OCF Facility being constructed on the Gould Property, the OCF cap, the OCF liner, the OCF leachate collection system, the OCF detection monitoring system, or any other remedial action that provides containment of hazardous substances, pollutants or contaminants or the ability to monitor such containment undertaken pursuant to the ROD, including no activities on the Property that would interfere with the sublateral support provided by the Property to the OCF. The parties agree that, within 180 days of completion of construction of the OCF, the parties will discuss, and based on that discussion, EPA will determine the specific restraints on the Property that are required to provide such sublateral support and will modify this restriction, pursuant to the process set forth in paragraph 4 below, to describe those specific restraints. The parties also agree that, within 180 days of completion of the Remedial Action, the parties will discuss, and based on that discussion EPA will determine through a modification process as set forth in paragraph 4 below any other specific restraints on the Property that are required to comply with the first sentence of this subsection 3.b.

C. The Property shall not be used for any commercial uses, as defined in the City of Portland Zoning Code, unless EPA determines in writing that such use is compatible with the protective level of cleanup that is achieved on that portion of the Property after implementation of the ROD.

These restrictive covenants, conditions, and restrictions touch and concern the Property, the Gould Property, and the easement granted in paragraph 5 hereof. They are intended to impose an equitable servitude upon the Property for the benefit of the Gould Property and the easement granted in paragraph 5 hereof. They shall run with the Property and inure to the benefit of all parties having or acquiring any fee interest in the Gould Property or in any part thereof and all parties having or acquiring any interest in the easement granted in paragraph 5, hereof.

4. Modification of Restrictions. The above restrictions and the easement rights granted below may be modified, or terminated in whole or in part, in writing, by the United States (as to it) or Gould (as to it) or both. However, Gould shall not modify or terminate its rights under this Easement without the consent of EPA so long as it is obligated to perform under the Consent Decree. Gould's termination or modification of its rights under this Easement shall not affect the rights and interest of Grantee United States and its assignees under this Easement. If requested by the Grantor, such writing will be executed by the United States or Gould in recordable form. Grantee Gould agrees that, if EPA or such governmental entity as may succeed to its authority has agreed with the Grantor to such a modification or termination, Grantee Gould will agree in writing, in a recordable form, to such modification or termination. During such time as the Consent Decree remains in effect, if Grantor requests that the United States modify or terminate a restriction or easement right and the United States declines to do so, Grantor may invoke and shall be subject to such Dispute Resolution procedures as exist under the Consent Decree.

5. Environmental Protection Easement.

a. Grant of Easement. Grantor hereby grants separately to each Grantee an irrevocable, permanent and continuing right of access at all reasonable times to the Property. The purposes of such access are:

- (1) Monitoring the activities that any settling defendant under the Consent Decree or respondents under an administrative order are required by the United States to perform in implementation of the ROD;
- (2) Verifying any data or information submitted to the United States or to the state of Oregon;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;

(5) Assessing the need for planning, monitoring, or implementing additional response actions at or near the Site;

(6) Implementing the Remedial Action;

(7) Determining whether the Site or other Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted by this document, a consent decree or an administrative order issued by the United States;

(8) Performing or overseeing the performance of monitoring actions or other response actions as defined by CERCLA section 101(25), 42 U.S.C. § 9601(25), on the Property which are required to be carried out during the Operations & Maintenance phase to be implemented after completion of the Remedial Action; and

(9) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations, and performing or overseeing the performance of any response actions called for by such periodic reviews.

b. Duration of Easement. Access granted under this paragraph expires pursuant to the following terms:

(1) Access to Grantee United States for the purposes set forth in subparagraphs 5.a.(1) through (6) shall expire when EPA, or such governmental entity as may succeed to its authority, certifies that the Remedial Action has been completed.

(2) Access to Grantee United States for the purposes set forth in subparagraphs 5.a.(7), (8) and (9) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Work has been completed.

(3) Access to Grantee Gould for the purposes set forth in subparagraphs 5.a.(1) through (6) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Remedial Action is complete.

(4) Access to Grantee Gould for the purposes set forth in subparagraphs 5.a.(7) through (9) shall expire at such time as EPA, or such governmental entity as may succeed to its authority, certifies that the Work is complete.

6. Reserved Rights of Grantor. Grantor hereby reserves unto itself and its successors and assigns in interest in the Property all rights and privileges in and to the use of the Property

which are not incompatible with the restrictions, rights and easements granted herein. Grantees acknowledge that the development and use of the Property for warehouse or other industrial use as described generally on the Site Plans attached as Exhibit C has been found by EPA to be compatible with the remedial action and is specifically permitted. The parties hereto acknowledge that Grantor intends to proceed with the development of the Property. Prior to the initiation of any field activities on the Property by either Grantor or Grantee Gould other than site visits or site inspections, such party shall provide to the other party general notice of its plans. At such point as excavation or construction is planned, the party planning such activity shall provide detailed construction plans and a proposed construction schedule to the other. Grantor and Grantee Gould agree to cooperate and consult in matters of scheduling and logistics to permit Grantees' exercise of their rights under the Easement and Grantor's development of the Property to proceed. Specifically, until the Remedial Action is completed, whenever Grantor plans an activity that could be reasonably likely to interfere with Grantees' access, at Grantee Gould or Grantor's request, a telephone conference or meeting shall be held to find a mutually satisfactory schedule for such activities. In the event that Grantor and Grantee Gould cannot find a mutually satisfactory schedule or agreement on the scope of the activities that Grantor can perform, the EPA Project Coordinator will meet with the parties and will determine what work proceeds and on what schedule. The decision of the EPA Project Coordinator shall be final and not subject to review. Grantor and Grantee Gould agree that they will not request excessive telephone conferences or meetings under this paragraph.

7. Nothing in this document shall limit or otherwise affect EPA's or its assignees rights of entry and access provided by law or regulation.

8. No Public Access and Use. No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

9. Notice Requirement. Grantor agrees, so long as any restriction established by paragraph 3 above or easement granted by paragraph 5 above remains in effect, to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 19 __, RECORDED IN THE PUBLIC LAND RECORDS ON _____, 19 __, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA AND ITS ASSIGNS.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee United States with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

10. Administrative Jurisdiction. The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. The Regional Administrator of EPA Region 10 shall exercise the discretion and authority granted to the United States herein. If the United States assigns its interest(s) created by this instrument, unless it provides otherwise in any such assignment document, the discretion and authority referred to in this paragraph shall also be assigned. In addition, after assignment of the interests created herein, the assignee of the United States shall receive any and all interests and rights granted to the United States in this document.

11. Enforcement. Either Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All reasonable costs and expenses of the Grantees, including, but not limited to, attorneys' fees, incurred in any such enforcement action, to the extent Grantees have prevailed, shall be borne by the Grantor or its successors in interest to the Property. In no event shall Grantee United States or its assigns pay attorney fees, nor shall Grantee Gould pay a share of attorney fees otherwise properly solely allocable to Grantee United States. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of either Grantee, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by either grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of either Grantee under this instrument.

12. Damages. Each Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

13. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Covenants. Grantor hereby covenants to and with the United States and its assigns, that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it, that the Property is free and clear of encumbrances, except those noted on **Exhibit D** attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

15. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Linda Wakefield
Schnitzer Investment Corp.
3200 N.W. Yeon
P.O. Box 10047
Portland, Oregon 97296-0047

To Grantee Gould

Michael Veysey, Esq.
General Counsel
Gould Electronics Inc.
34929 Curtis Blvd.
Eastlake, Ohio 44095-4001

With a copy to:

Anton U. Pardini
The Schnitzer Group
3200 N.W. Yeon
P.O. Box 10047
Portland, Oregon 97296-0047

To Grantee United States:

16. General Provisions.

a. Controlling Law. The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of Oregon, where the property is located. To the extent not otherwise specifically defined in this document, any capitalized term shall bear the meaning given to it in the Consent Decree.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. Severability. If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provision of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein except for the Gould/Schnitzer Settlement dated October 22, 1997 and the Agreement Between Schnitzer Investment Corp. And Gould Superfund Site PRPs dated October 22, 1997, which, as between Grantor and Grantee Gould only, are incorporated herein.

e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g. Successors. The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and upon successors and assigns in interest in the Property (including the easement granted in paragraph 5 above) and successors and assigns in interest in the Gould Property and shall continue as a servitude running in perpetuity with the Property for the benefit of the Gould Property and the easement granted pursuant to paragraph 5 above. The term "Grantor," wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and the successors and assigns in interest in the Property, and heirs and personal representatives thereof. The term "Grantee," wherever used herein, and any pronouns used in place thereof, shall include the United States of America, and its designated representatives, and any assignee in the United States' interest in the easement granted in paragraph 5 above, and its designated representatives. The United States covenants that it will only assign such interest to the State of Oregon or a subdivision thereof. The term "Grantee" whenever used herein, and any pronouns used in place thereof, shall also mean Gould and the successors and assigns in interest in the Gould Property, and heirs and personal representatives thereof. The rights of the Grantee Gould and Grantor under this instrument are freely assignable only to any person or entity that acquires an interest in the Gould Property or the Property, respectively, subject to the notice provisions hereof.

h. Termination of Rights and Obligations. A party's right and obligations under this instrument terminate upon transfer of the party's interest in the easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be

deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the United States and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this ____ Day of _____, 19 ____.

SCHNITZER INVESTMENT CORP.

By: _____

Its: _____

STATE OF OREGON)
)
)ss.
)
)
County of)

This instrument was acknowledged before me on _____, 19____, by _____
_____, as _____ Of _____, a(n) corporation.

Notary Public of Oregon

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This easement is accepted this ____ day _____, 19 ____.

Executed this ____ day of _____, 19 ____.

GOULD ELECTRONICS INC.

By: _____

Its: _____

STATE OF OHIO)
)
) ss.
)
County of)

Before me, a notary public, in and for said, county, personally appeared _____, known to me to be the person who, as _____ of GOULD ELECTRONICS INC., executed the foregoing instrument, signed the same, and acknowledged to me that ____ Did so sign said instrument in the name and on behalf of the corporation as _____; that the same is ____ Free act and deed as _____, and the free and corporate act and deed of said corporation, and ____ Is duly authorized to sign said instrument

SUBSCRIBED AND SWORN to before me this _____ day of _____, 1997.

Notary Public for Ohio

My commission expires: _____

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/////

/////

/////

This easement is accepted this ____ Day of _____, 19 ____.

UNITED STATES OF AMERICA

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By: _____

STATE OF WASHINGTON)

)

)

ss.

)

County of _____

)

This instrument was acknowledged before me on _____, 19 __, by _____
_____, as _____ Of _____, a(n) corporation.

Notary Public for Washington

Attachments: Exhibit A - legal description of the Property
Exhibit B - legal description of Gould Property
Exhibit C - identification of proposed uses and construction plans, for
the Property

EXHIBIT A

**LEGAL DESCRIPTION FOR
SCHNITZER INVESTMENT CORP. UNDEVELOPED PROPERTY**

A tract of land situated in the Milton Doane Donation Land Claim in the East one-half of Section 13, Township 1 North, Range 1 West of the Willamette Meridian, City of Portland, County of Multnomah and State of Oregon, described as follows:

A tract of land commencing at the most Westerly corner of "Bridgeport", said point being the intersection of the Northwestern right-of-way line of N.W. Balboa Avenue (vacated) and the Southwesterly boundary of N.W. Culebra Avenue;

Thence North $44^{\circ}16'30''$ West (Deed North $44^{\circ}16'$ West) along the Southwesterly right-of-way line of said N.W. Culebra Avenue 722.72 feet (Deed 722.00 feet) to a point of intersection with the Northwestern right-of-way line of N.W. 61st Avenue;

Thence North $31^{\circ}15'41''$ East (Deed North $31^{\circ}15'$ East) along said Northwestern right-of-way line 600.00 feet;

Thence North $44^{\circ}16'30''$ West (Deed North $44^{\circ}16'$ West) 441.52 feet to the TRUE POINT OF BEGINNING of the hereinafter described tract of land;

Thence continuing North $44^{\circ}16'30''$ West, 375.91 feet;

Thence North $31^{\circ}15'41''$ East, 374.22 feet (Deed North $31^{\circ}15'$ East, 272.85 feet) to a point on the Southwesterly right-of-way line of N.W. Front Avenue;

Thence South $41^{\circ}42'10''$ East along said right-of-way line 485.15 feet;

Thence perpendicular to said right-of-way line South $48^{\circ}17'50''$ West, 340.87 feet to the TRUE POINT OF BEGINNING.

Containing therein an area of 150,784.0 square feet, more or less (3.462 acres, more or less).

EXHIBIT B

LEGAL DESCRIPTION OF GOULD PROPERTY

EXHIBIT C

**IDENTIFICATION OF PROPOSED USES AND
CONSTRUCTION PLANS FOR THE PROPERTY**

30.0' ACCESS EASEMENT

FIRE LANE

100.0'

110.0'

60,800 SQ FT +/-

10.0'

200'

32.5'

35.0'

25.0'

1" = 50'-0"

PRELIM. SITE PLAN

1
G-1

FRONTG-1 VLMR PLOT DATES:

11 4 11 11-4 36500 NW FRONT AVE